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**REPORT**

**OF THE**

**PROCEEDINGS AND EVIDENCE**

**IN THE ARBITRATION BETWEEN THE**

**ROYAL GOVERNMENT OF THE HAWAIIAN ISLANDS**

**AND**

**MESSRS. LADD & CO.,**

**BEFORE**

**MESSRS. STEPHEN H. WILLIAMS & JAMES F. B. MARSHALL,**  
**ARBITRATORS UNDER COMPACT 13TH JULY, 1846.**

**PRINTED BY ORDER OF THE ARBITRATORS IN ACCORDANCE WITH THE COMPACT.**

**Honolulu, Oahu :**

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**1846.**

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Wm & Rev A. C. Everett  
of Charleston, S.C.

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JAMES JACKSON JARVES,  
DIRECTOR OF GOVERNMENT PRESS.

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## PROCEEDINGS AND EVIDENCE

IN THE ARBITRATION BETWEEN THE

GOVERNMENT OF THE HAWAIIAN ISLANDS

AND

MESSERS. LADD & CO.

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### ARTICLES OF COMPACT AND AGREEMENT

*Entered into this thirteenth day of July, one thousand eight hundred and forty-six, between His Majesty's Attorney General on behalf of the King and Government of the Hawaiian Islands, of the one part, and William Ladd, Peter A. Brinsmade and William Hooper, all of Honolulu, Hawaiian Islands of the other part.*

Whereas, the said Ladd, Brinsmade and Hooper, citizens of the United States of America, and for the last thirteen years, resident merchants in Honolulu aforesaid, under the name, style and firm of Ladd & Co., claim to have demands against the Hawaiian Government, which said Government deny, and which the respective parties to this agreement are mutually desirous to ascertain, liquidate and settle, upon legal and equitable principles :

They have therefore respectively agreed to submit said demands, of whatever name and kind soever, up to the date hereof, and all claims for damages arising under the same, either in law or equity, to the final award, order, arbitrament, determination and judgment under oath, of Stephen H. Williams, on the part of said Government, and of James F. B. Marshall on the part of said Brinsmade, Ladd and Hooper, arbitrators indifferently chosen by the respective parties hereto and the impartial umpire hereinafter agreed upon. All unsettled book accounts, all unliquidated and unascertained claims, and all specialty contracts, specialty agreements, and all demands founded upon specialty existing between the parties, (other than mortgage contracts,) and all *parole* agreements and contracts (other than promissory notes) so to be submitted, and agreed to be submitted as hereinafter mentioned, are agreed to be merged in the following questions, viz:





"How much ought the Hawaiian Government to pay said firm Ladd & Co. for all their property, of whatsoever name and kind, tangible and intangible, including contracts of every description, taking into consideration whether they, the said firm of Ladd & Co., are entitled to indemnity of said Government for any losses or damages they may have sustained in consequence of any illegal acts done or wrongs committed by the said Hawaiian Government."

And the respective parties hereto further mutually consent and agree to stand to, obey, abide, observe, perform, fulfill, and keep the final award, order, arbitrament, determination and judgment of the said Stephen H. Williams and James F. B. Marshall, when made and put in writing by them, under their hands and seals, and filed in court, as hereinafter mentioned, without any appeal therefrom or objection thereto: *provided, however*, and this submission is upon this express condition, that if the said Stephen H. Williams and James F. B. Marshall shall be unable to agree upon a final award, determination and judgment as aforesaid, then and in that case all the documents submitted to, and the testimony taken before said Stephen H. Williams and James F. B. Marshall, arbitrators on the part of the respective parties, stenographised by order of the said arbitrators, and revised and certified by them to be correct, together with the written explanations and stenographised oral arguments or written arguments of both parties, shall be placed in the hands of and submitted to Commodore Robert F. Stockton, in case he shall arrive at Honolulu within three calendar months from the date of this submission, or otherwise to the Chief Justice of the Supreme Court of Judicature of the State of New York, for the time being, as the impartial umpire hereby agreed upon for final award, determination and judgment.

And it is hereby further understood and agreed by and between the respective parties hereto, that the decision, determination and judgment of the said umpire, so agreed upon as aforesaid, shall have the same force, effect and validity, and shall be as binding and obligatory upon all parties to this submission, without further appeal or reference, as if it was or had been the final award and determination agreed upon by the said Stephen H. Williams and James F. B. Marshall; and the respective parties hereto further agree to stand to, abide, obey, observe, perform, fulfill and keep such final award, determination and judgment of such umpire aforesaid, when made and put in writing by him, under his hand and seal, and filed in court, as hereinafter mentioned, by the party in whose favor the same may be made.

To this end the said firm of Ladd & Co. agree to file with said arbitrators a detailed statement of the grounds, reasons and items of their claims against said King and Government, within ten days from the day said arbitrators shall have been sworn, and at the same time to furnish a copy thereof to the said Attorney General, and to appear and produce their proofs and arguments in substantiation thereof



on the days assigned for hearing by said arbitrators, who shall not reject evidence for any but legal cause, and who shall hear all the evidence offered by either party before awarding.

And the said Government agree to appear in like manner, and within the like number of days, after receipt of copy of the detailed statement of grounds, reasons and items of claims, to be filed and served as aforesaid by the said Ladd & Co.; and having filed its points of controversy, offset and defence to such claims, as may have been so set up by said Ladd & Co., copies of which points of controversy, offset and defence shall, within the same time, be furnished to said Ladd & Co., or their attorney, adduce evidence and arguments controverting any and all such claims, they, the said Government, represented by said Attorney General, being allowed the like full latitude of testimony and debate as aforesaid before award.

And it is further mutually agreed that an original copy of this submission be filed on or before the day of swearing said arbitrators the Attorney General, with his Honor, Lorrin Andrews, Judge Oahu, at Honolulu, to be considered as a rule of his court, and as the measure of the duties and powers of the said arbitrators: that the witnesses of the respective parties, at their indication, be subpoenaed to attend said arbitrators by said judge, as if the controversy were pending before him, and be sworn by him or by Charles G. Hopkins, Esquire, Justice of the Peace, before testifying; that said judge may, whenever required so to do by said arbitrators, unless they disagree, grant such interlocutory orders, on behalf of either party, as may be in aid of the duties of said arbitrators and the interest of the respective parties to this submission; that the said arbitrators be respectively sworn by said judge, impartially, fully and patiently to hear, consider and adjudicate the matter in controversy between the said parties as presented to them within the purview and true meaning of this compact, allowing said parties full latitude of hearing and debate, and that the final award which may be rendered by them in accordance herewith, or in case of their disagreement, the final award which may, in accordance herewith, be rendered by the said umpire, being filed by either party to this submission with said judge, shall be recorded in his book of records of judgments of his court, to be enforced by execution without any appeal therefrom.

And it is also further mutually agreed, that in case of reference to an umpire, as hereinbefore contemplated, the records of proceedings, proofs and debates had and stenographed before said arbitrators, being first duly revised and corrected as aforesaid, shall be printed for the use of said umpire, and the respective parties, but not for dissemination until final award, and that the respective parties will equally contribute and mutually pay all costs of arbitration, to be awarded by said arbitrators, and all expenses of submission, stenography, printing, and other necessary and incidental outlays to be in-





curred, share and share alike, upon taxation and allowance thereof said arbitrators.

In witness whereof, the parties to this compact have hereunto set their hands and respective seals in triplicate, at Honolulu, the day and year first above written.

The KING AND GOVERNMENT of the Hawaiian Islands by

JOHN RICORD, [L. S.]  
Attorney General.

WILLIAM LADD. [L. S.]

P. A. BRINSMADE. [L. S.]

WM. HOOPER. [L. S.]

Signed and sealed in presence of [the words "*of the Supreme Court of Judicature*" interlined on the 3d page, and the words "*whenever required so to do by said arbitrators, unless they disagree,*" interlined on the 5th page of this submission, before signing.]

A. TEN EYCK.

AHAKUKAKUKA MALU, HALE ALII, }  
Honolulu, 13 Iulai, 1846. }

Ma keia palapala ke ae aku nei au, a ke hoopaa nei au i na olelo ae like i kakauia maluna a ke olelo aku nei au ua paa ko, u Aupuni malaila.

A no ka oiaio o keia olelo ke kau nei au i ko'u inoa a me ka wepa nui oke Aupuni o ko Hawaii nei Pae Aina, i ka la a i ka makahiki i oleloia maluna.

KAMEHAMEHA. [L. S.]

KEONI ANA.

By the King and Premier.

R. C. WYLLIE,  
Minister of Foreign Relations.

ATTORNEY GENERAL'S OFFICE, }  
Honolulu, 14th July, 1846. }

SIR,—I have the honor to inclose you, for Messrs. William Ladd, Peter A. Brinsmade and William Hooper, American citizens, claimants, an original of triplicate articles of compact, concluded and ratified by His Majesty, in Privy Council, on yesterday, the 13th inst. The original copy retained by His Majesty's Government, has been duly filed in the archives of His Excellency, the Minister of Foreign Relations, who will give such promulgation thereto as our statutes require in cases of private treaty under the like usages of nations.

The triplicate original has also this day been filed with His Honor, Lorrin Andrews, Judge of original and appellate jurisdiction for the Island of Oahu, at this place, who will give the notices requested of



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him, in the note accompanying that triplicate; copy of which is  
is herewith inclosed for your information.

I shall wait the precedent action of Messrs. Ladd, Brinsmade and  
Hooper under the compact,

And have the honor to be, your obedient servant,

JOHN RICORD, Attorney General.

ANTHONY TEN EYCK, Esq.,

Commissioner of the United States, &c.

ATTORNEY GENERAL'S OFFICE, }  
Honolulu, 13th July, 1846. }

SIR,—It becomes my duty to inclose you an original of triplicate  
articles of compact, this day concluded and ratified between His  
Majesty, on behalf of this Government, and Messrs. William Ladd,  
Peter A. Brinsmade, and William Hooper, resident American  
citizens.

Your Honor will observe that by the compact it is provided that  
such copy being filed with you, it is to become "*a rule of your court*,"  
i. e., a mandate of your court as much as if you had appointed the  
arbitrators therein named, referees under the ninth rule of practice of  
your court, to be governed by the terms and provisions of the com-  
pact. Also, that you are to swear the arbitrators named "*impartially*,  
fully and patiently to hear, consider and adjudicate the matters in  
controversy between the said parties, as presented to them, within  
the purview and true meaning of this compact, allowing said parties  
full latitude of hearing and debate; not to reject evidence for any  
but legal cause, and to hear all the legal evidence offered by either  
party before awarding."

Such is the stipulated form of the oath which should be subscribed  
and sworn to before you by the arbitrators.

The compact being in contemplation of law, a proceeding in your  
court, an order or mandate emanating from you, your Honor will be  
pleased without delay to inclose copy of it to each of the arbitrators  
named, and notify them to appear and be sworn. Also, that by its  
terms, they have the right to resort to you in consultation, should any  
doubt arise which they are unable to solve, or should any interlocu-  
tory order, writ or mandate be necessary to the fulfilment of the  
delicate trust confided in them.

I have the honor to be, your obedient servant,

JOHN RICORD, Attorney General.

HON. LORRIN ANDREWS,

Judge of Original and Appellate Jurisdiction for Honolulu, Oahu.





ATTORNEY GENERAL'S OFFICE, }  
Honolulu, July 14th, 1846. }

SIR.—Your Excellency will please find inclosed an original of a triplicate compact, in the nature of a private treaty, so considered by the law of Nations, concluded, signed and ratified by His Majesty on yesterday, which original belongs to the archives of your department by section IV, part 2d, of an Act to Organize the Executive Departments, and which section makes promulgation necessary.

You will also find inclosed copies of certain despatches from this department, accompanying originals of the triplicate compact, one sent to His Honor, Lorrin Andrews, Judge of Oahu, at Honolulu, to be filed as a stipulated rule of his court between the parties, and the other herewith inclosed for transmission to Messrs. William Ladd, Peter A. Brinsmade and William Hooper, through Anthony Ten Eyck, Esq., Commissioner of the United States, which last named original your Excellency will do me the favor to transmit officially, and to inform him of the action of His Majesty thereon.

I have the honor to be your obedient servant,  
JOHN RICORD, Attorney General.

His Excellency, R. C. WYLLIE,  
Minister of Foreign Relations, &c.

#### LETTER OF JUDGE ANDREWS TO ARBITRATORS.\*

COURT ROOM, Honolulu, Aug. 4th, 1846.

SIR,—Agreeably to the terms of a compact between the King and Government of the Hawaiian Islands on the one part, and Messrs. William Ladd, Peter A. Brinsmade and William Hooper, on the other part, concluded on the 13th July, 1846, copy of which is by stipulation filed with the undersigned as a rule or mandate of this court, you have been chosen to arbitrate and determine the matters in controversy between them.

I have the honor to inclose for your guidance a certified copy of that compact, and to inform you that to-morrow at 3 o'clock, P. M., I shall be in waiting here and prepared to administer to you the oath agreed upon between the parties. I hope you will do me the favor to present yourself for that purpose at that time.

I have the honor to be your obedient servant,  
(Signed,) LORRIN ANDREWS.

I certify the above to be a true copy.  
LORRIN ANDREWS.

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\* A copy of this letter was addressed to each of the arbitrators.



## OATH OF ARBITRATORS.

"You solemnly swear that you will impartially, fully, and fairly hear, consider, and adjudicate the matters in controversy between the said parties as presented to you within the purview and true meaning of this compact, allowing said parties full latitude of hearing and debate; not to reject evidence for any but legal cause, and to hear all the legal evidence offered by either party before awarding."

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HONOLULU, August 5th, 1846.

SIR,—You are hereby notified that Messrs. Stephen H. Williams and James F. B. Marshall, who were mutually chosen by the Hawaiian Government on the one part, and Messrs. William Ladd, P. A. Brinsmade and William Hooper on the other part, to act as arbitrators between the said parties; that is to say, to hear and adjudicate such points of dispute as may be brought before them in certain papers called "articles of compact," have this day taken the oath required of them by said articles of compact, and are thus legally empowered to act in the case.

With sentiments of respect, I am your obedient servant,

LORRIN ANDREWS.

JOHN RICORD, Esq.,

Attorney for Government.

A similar notice sent to Messrs. Ladd & Co.

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## CLAIMS OF LADD &amp; CO.

1st. We claim the valuation or price of properties and privileges of every kind situated and possessed by us upon the Sandwich Islands prior to the 1st of January, 1842.

The grounds of this claim are based upon two certain contracts, the one executed on the 17th of May, 1843, in the city of Brussels, in the kingdom of Belgium, between the Sandwich Islands Government, the Belgian Company of Colonization, and ourselves; and the other executed on the 24th day of November, 1841, in Lahaina, Sandwich Islands, between the Government of said Sandwich Islands and ourselves.

The reasons for this claim consist in the fact, as we contend, that the Sandwich Islands Government has made itself liable for the full value of such properties and privileges by infringing said contracts, and rendering their execution on our part impossible.

The items of this claim consist in the price or amount agreed to be paid to us for all the properties, privileges, transfers and conces-





sions, made or agreed to be made by us in pursuance of said contract of May, 1843, amounting to \$200,000.

2d. We claim damages for being deprived of lucrative situations engaged to be secured to us in the business designed to be prosecuted in pursuance of said contracts.

The grounds and reasons of this claim are based upon said contracts, and their infringement as aforesaid by said Government, and upon understandings and agreements had by and between the parties to said contracts; and the item claimed as damages by us amounts to \$75,000.

3d. We claim damages resulting from the sale of our properties and the rents, issues and profits thereof, by said Sandwich Islands Government, or their authorized agents.

The grounds of such claim are the sales as aforesaid.

The reasons are that such sales were illegal and unjust, and in direct violation of said contracts, and the guarantees assumed by said Sandwich Islands Government for our benefit.

The items claimed under this head amount to \$32,000.

4th. We claim damages resulting from the attachments and sales of our properties and goods in store at Honolulu, sold in December, 1844.

The grounds of this claim are the attachments and sales.

The reasons are, that such attachments and sales were illegal and irregular throughout, and contrary to the guarantees assumed by said Sandwich Islands Government, and the understandings and agreements had with all the parties to said contract of May, 1843.

The item claimed under this head amounts to \$8,000.

5th. We claim damages for the non-fulfillment of a certain contract entered into by Kaikioewa, Governor of Kauai, and ratified by the King of the Sandwich Islands, for the building of a ware-house at Koloa.

The grounds and reasons of this claim are, the contract itself, and its non-fulfillment on the part of the Governor and King, and the amount of damages claimed is \$2,000.

6th. We claim damages for the non-fulfillment of a certain contract entered into by the King and Premier of the Sandwich Islands, for the good cultivation of 50 acres of sugar cane near the sugar mill at Koloa.

The grounds and reasons of this claim are the contract itself and its non-fulfillment on the part of the King and Premier; and the amount claimed for damages is \$10,000.

7th. We claim resulting from being deprived by the Government, or its agents, of the use and profits of the canal at Lahaina.

The grounds of this claim are that the said canal was taken possession of and held by the Government or their agents, and we deprived of the same without our assent and in utter disregard of our protest against it.



The reasons are that such proceeding was entirely irregular, illegal and an arbitrary assumption of power.

The amount claimed as damages under this head is \$1,000.

8th. We claim damages for injuries done to our character.

We base this claim upon the proceedings of the court in the so called trial of Brinsmade vs. Jarves, before Judge Andrews in May last.

The reasons of the claim are, that such proceedings were unnecessary in the prosecution of the defence in the case, unjust, in direct violation of the constitution and laws of the Sandwich Islands, in violation of the protest made by Mr. Brinsmade before the King, and by him and ourselves before the Judge before whom the proceedings were had and continued after the party plaintiff had voluntarily submitted to a non-suit and withdrawn from the case entirely; that such proceedings were *ex parte*, uncalled for, arbitrary, of a highly offensive and defamatory character, and that we have suffered damages consequent therefrom to the amount of \$50,000.

The foregoing constitute a "detailed statement of the grounds, reasons and items" of our claims against the King and Government of the Hawaiian Islands, in pursuance of certain articles of agreement entered into between said King and Government and ourselves on the 13th of July, 1846, and which we are prepared to prove and substantiate by documentary evidence and oral testimony, before the arbitrators chosen in pursuance of said agreement, on such days as they shall assign for hearing the same.

P. A. BRINSMADE,  
WILLIAM LADD,  
WILLIAM HOOPER.

HONOLULU, August 6th, 1846.

## POINTS OF CONTROVERSY

*To the claims of Ladd & Co., under a compact of reference entered into 13th of July, 1846. A statement of said claims, with their grounds, reasons and items, was served upon the undersigned, 8th of August, 1846.*

### POINT A.

The King and Government of the Hawaiian Islands, represented by the undersigned, wholly deny item 1st of the claim of Ladd & Co., to wit:

"The valuation or price of their properties and privileges of every kind, situated and possessed by them upon the Sandwich Islands prior to the 1st of January 1842;" and consequently with said item they deny all other items of said claim as filed.





Because 1st, The true meaning of the compact of 13th July 1846, does not admit of such an item as the first and consequently does not extend to the other items of their said claim as filed.

All the claims of said Ladd & Co. were agreed by that compact to be merged in the following question :

" How much ought the Hawaiian Government to pay said firm of Ladd & Co. for all their property of whatever name and kind tangible and intangible including contracts of every description, taking into consideration whether they the said firm of Ladd & Co. are entitled to indemnity of said Government for any losses or damages they may have sustained in consequence of any illegal acts done or wrongs committed by the said Hawaiian Government."

The price of any property said Ladd & Co. may have possessed " prior to the 1st day of January, 1842," is not agreed to be submitted to the arbitrators, but the price of any property they may now possess. Said Ladd & Co. do not alledge the ownership or possession of any property, tangible or intangible, on the 13th of July, 1846, forming the proper basis of their claim under the compact. The King and Government do not therefore understand the said first item of claim, nor by consequence the others, to be within the true meaning of the articles of compact, and hence dispute the propriety of Ladd & Co.'s claims to damages *in toto*.

Because 2d, The grounds upon which Ladd & Co.'s first item is alledged to rest, are " two certain contracts, the one executed on the 17th May, 1843, in the city of Brussels, in the kingdom of Belgium, between the Sandwich Island Government, the Belgian Company of Colonization and Ladd & Co.; and the other executed on the 24th of November, 1841, in Lanaina, Sandwich Islands, between the Government of the Sandwich Islands and Ladd & Co."

By reference to the question agreed upon for arbitration, it will be perceived Ladd & Co. have engaged that any damages the Hawaiian or Sandwich Island Government " may have made itself liable for," " by infringing said contracts and rendering their execution impossible," shall be taken into consideration in establishing " how much ought the Hawaiian Government to pay said firm of Ladd & Co. for all their property, of whatever name and kind, tangible and intangible, including contracts of every description."

It is and was the duty of Ladd & Co. under the compact, primarily to have averred and offered to prove, the *bonâ fide* and legal ownership by them of some property, either tangible or intangible, including contracts in the Hawaiian Islands, and to have alledged or averred some value real or hypothetical to said property, before claiming of the arbitrators an augmentation of that stated value by the breaches of the two contracts which they falsely alledge. Not having done this, their first and consequently all subsequent claims must fall to the ground by the very words of the compact.



*Proofs of foregoing denial.*—The compact itself. The laws of the Hawaiian Islands, existing on the 1st day of January, 1842, and on the 13th of July, 1846, equally applicable to said Ladd & Co., and their contracts and agreements as to other persons or parties, native or foreign in the Hawaiian Islands.

Also the laws, constructions and decisions of the United States and Great Britain, in like cases applicable by way of analogy.

But although the foregoing objections are radical and fatal to said claim as filed, for greater certainty in case said objections should be overruled,—

3d, The said King and Government utterly deny that said Ladd & Co. on or since the 13th day of July, 1846, owned or possessed, either legally or validly, any property of any value whatsoever, either in the Hawaiian Islands or elsewhere, tangible or intangible, including contracts.

They also deny that any property, either tangible or intangible, of the said Ladd & Co. has been impaired in value “in consequence of any illegal acts done or wrongs committed by the said Hawaiian Government.”

They also deny the existence, authenticity, legality and constitutionality of any such contract as that stated by the said Ladd & Co. to have been “executed on the 17th of May, 1843, in the city of Brussels, in the kingdom of Belgium, between the Sandwich Island Government, the Belgian Company of Colonization, and Ladd & Co.”

The said King and Government deny being parties by agreement to any such contract, through any authorized agent. They deny having at any time assented to, ratified, or in any other way become a party to any such contract either before or after its execution.

They claim the same right as other parties whether private or corporate, to delegate agents under the general law of agency, and to ratify the contracts or the treaties of such agents under the law of nations.

They deny the fulfillment on the part of those interested in the alledged contract of 17th May, 1843, of conditions precedent to any which are therein stated to be fulfillable by the said King and Government, the non-fulfillment of which precedent conditions even if the said alledged contract were valid in other respects would excuse the said King and Government from its fulfillment.

They wholly deny the existence of any considerations good or valuable founding the alledged contract of 17th May, 1843.

They deny the power and authority of those who may have contracted any such engagement, to bind said King and Government.—They contend that such want of power and authority was known to the said Ladd & Co., or their agent, at the time the alledged contract was executed, and also that said Ladd & Co. through their

agent understood the ratification thereof by said King and Government to be necessary to the validity of said contract.

They deny that if such a contract as that of 17th May, 1843, exists, or is valid, said Ladd & Co. are the proper parties to demand the fulfillment of its conditions on the part of said King and Government.

They aver that if such a contract exists and is binding it is the right and duty of other parties than said Ladd & Co. to seek the fulfillment of its terms and conditions, and they deny that said Ladd & Co. are properly speaking parties to it, averring that those to whom that right belongs have waived entirely the fulfillment of the terms and conditions of any such contract on the part of said King and Government.

Said King and Government in like manner wholly deny the existence, authenticity, legality and constitutionality of any such contract as that stated by the said Ladd & Co. to have been "executed on the 24th day of November, 1841, in Lahaina, Sandwich Islands, between the Government of the Sandwich Islands and Ladd & Co."

They deny that if any instrument purporting to be such a contract exists, that it is a contract valid and binding in law. They aver that if any instrument purporting to be such a contract exists the said Ladd & Co. have long since ceased to be parties to it, they having assigned it to third persons for a consideration appearing to them good and sufficient.

They deny that any consideration founded the said alleged contract of 24th November, 1841.

They deny the fulfillment by said Ladd & Co. of the consideration if any founding such contract; and the said King and Government deny that any "price or amount was agreed to be paid to said Ladd & Co. for all their properties, privileges, transfers and concessions, made or agreed to be made by them in pursuance of the said contract of May, 1843, amounting to \$200,000."

*Proofs of foregoing denial.*—Various documents, books, letters and papers. The oral testimony of numerous witnesses in the Hawaiian Islands, the United States, Great Britain, France and Belgium, to be examined before the arbitrators, or upon commission to be issued for that purpose. The constitution and laws of the Hawaiian Islands. The law of nations.

The laws, usages, decisions, interpretations, inferences and constructions in like cases of Great Britain, France, the United States and Belgium.

#### POINT B.

The said King and Government, represented by the undersigned, wholly controvert and deny the second item of claim set up by said Ladd & Co. to "damages for being deprived of lucrative situations en-

gaged to be secured to them in the business designed to be prosecuted in pursuance of the said contracts of 17th May, 1843, and 24th November, 1841."

They also further wholly controvert and deny the grounds and reasons of said second item of claim stated to be "based upon said contracts, and their infringement as aforesaid, and upon understandings and agreements had by and between the parties to said contracts," in consequence of which the said Ladd & Co. alledge damages \$75,000.

*Proofs of foregoing denial.*—Various documents, books, letters and papers. The oral testimony of numerous witnesses in the Hawaiian Islands, in the United States, Great Britain, France and Belgium, to be examined before the arbitrators or upon commission to be issued for that purpose. The constitution and laws of the Hawaiian Islands. The law of nations.

The laws, usages, decisions, interpretations, inferences and constructions in like matters of Great Britain, France, the United States and Belgium.

#### POINT C.

The said King and Government represented as aforesaid, further wholly controvert and deny the third item of claim set up by said Ladd & Co. to "damages resulting from the sale of their properties, and the rents, issues and profits thereof, by the said Sandwich Island Government or their authorized agents."

They also controvert and deny the grounds of such claim to damages as stated by said Ladd & Co., and the reasons assigned therefor, to wit: that "such sales were illegal and unjust, and in direct violation of said contracts and the guarantees assumed by said Sandwich Island Government, for the benefit of the said Ladd & Co.," amounting as stated by them to \$32,000.

The said King and Government aver that the sales alluded to were in consequence of the acts of said Ladd & Co.,—that they were necessary to the ends of justice as between man and man—that they were strictly in accordance with the laws and usages of the Hawaiian Islands, and with the obligations of her treaties entered into with other nations—that they were pursuant to judicial mandates of a tribunal of said Government,—all which considerations are and were of paramount obligation to any contract, be it ever so lawful and valid.

Said King and Government wholly deny the alledged illegality and unjustness of said sales, the alledged violation of any contracts in consequence thereof, and the existence of any "guarantees alledged to have been assumed by the Sandwich Island Government for the benefit of said Ladd & Co." which guarantees could be or were violated by such sales.

*Proofs of foregoing denial.*—Various documents, books, letters and papers. The oral testimony of numerous witnesses in the Ha-

waiian Islands, to be examined before the arbitrators, or upon commission, to be duly issued for that purpose.

The constitution and laws of the Hawaiian Islands: the law of nations.

The laws, usages, decisions, interpretations, inferences and constructions, in like matters and cases, in Great Britain, France and the United States.

#### POINT D.

The said King and Government, represented as aforesaid, wholly controvert and deny the 4th claim of the said Ladd & Co., for damages "resulting from attachments and sales of their properties and goods in store, at Honolulu, sold in December, 1844."

They also wholly controvert and deny that such attachments and sales were illegal and irregular, throughout, and contrary to any guarantees assumed by said Sandwich Island Government, and any understandings and agreements had with any parties to a contract, of May 1843, to which the said King and Government was a party, or which were obligatory upon the said King and Government, entitling said Ladd & Co., to claim \$8,000.

The said King and Government aver that said attachments and sales were in consequence of the acts of said Ladd & Co., that they were necessary to the ends of justice between man and man—that they were strictly in accordance with the laws and usages of said Government—that they were pursuant to the mandates of her tribunals, and that their necessity was paramount to any contracts, be they ever so lawful or valid.

*Proofs of foregoing denial.*—Various documents, books, letters and papers. The oral testimony of numerous witnesses in the Hawaiian Islands, to be examined before the arbitrators, or upon commission, to be issued for that purpose. The constitution and laws of the Hawaiian Islands. The law of nations.

The laws, usages, decisions, interpretations, inferences and constructions, in like cases, matters and proceedings, in the United States, Great Britain and France.

#### POINT E.

The said King and Government, represented as aforesaid, wholly controvert and deny the 5th item of claim set up by said Ladd & Co., to "damages for the non-fulfillment of a certain contract entered into by Kaikioewa, Governor of Kauai, and ratified by the King of the Sandwich Islands, for the building of a warehouse at Koloa."

They wholly deny the alledged non-fulfillment of said contract on the part of the Governor and King, and that said Ladd & Co., are entitled to claim damages therefor \$2,000.

Said King and Government, aver that the contract alluded to, has been fulfilled subsequently to any breach of its conditions, and claim

the full legal waiver of said Ladd & Co., for all delays in the execution thereof, and hence, contend that no such claim to damages for its non-fulfillment, can attach either in law or equity.

*Proofs of foregoing denial.*—Various documents, books, letters and papers. The oral testimony of witnesses in the Hawaiian Islands, to be examined before the arbitrators, or upon commission, to be duly issued for that purpose.

The laws, usages, interpretations, inferences and constructions, in like cases and matters, in Great Britain, France and the United States.

#### POINT F.

And the said King and Government, represented as aforesaid, further wholly controvert and deny the 6th item of claim stated by said Ladd & Co., to be for “damages for the non-fulfillment of a certain contract entered into by the King and Premier of the Sandwich Islands for the good cultivation of fifty acres of sugar cane, near the sugar mill at Koloa.”

They also wholly controvert and deny the grounds and reasons of said claim, stated to be “the contract itself, and its non-fulfillment on the part of the King and Premier,” by reason of which the said Ladd & Co., have lawfully any right to claim damages, \$10,000.

The said King and Government aver that they have legally fulfilled said agreement, and that the non-fulfillment thereof, having been on the part of said Ladd & Co., they, the said Ladd & Co., cannot in law, recover damages for any breach like, or similar, on the part of said King and Government.

*Proofs of foregoing denial.*—Various documents, books, letters and papers. The oral testimony of witnesses in the Hawaiian Islands to be examined before the arbitrators, or upon commission to be issued for that purpose. The constitution and laws of the Hawaiian Islands.

The laws, usages, decisions, interpretations, inferences, and constructions, in like cases, and under similar circumstances in Great Britain, France and the United States.

#### POINT G.

And the said King and government represented as aforesaid, wholly controvert and deny the 7th item of claim set up by said Ladd & Co., to “damages resulting from being deprived by the Government or its agents, of the use and profits of the canal at Lahaina.”

They also wholly controvert and deny the grounds upon which the said item of claim is alledged to rest, viz: “That the said canal was taken possession of and held by the Government or their agents, and the said Ladd & Co., deprived of the same, without their assent, and in utter disregard of their protest against it.”

They controvert and deny that the assent of the said Ladd & Co. was necessary to justify the taking possession or holding possession

of said canal, by said Government or their agents, and also that any protest of the said Ladd & Co., against such taking and holding, was, or is of any legal force or validity in law, or that such protest could in law, operate as a legal or just obstacle to such taking and holding by said Government.

They wholly controvert and deny that such taking and holding was "entirely irregular, illegal, and an arbitrary assumption of power;" and that said Ladd & Co., have any right in consequence, to claim damages, \$1,000.

The said King and Government aver that said Ladd & Co. were not legally or equitably entitled to the use, possession, ownership or income, of the said canal; but that the said use, possession, ownership and income, wholly belonged to said Government at the time said Ladd & Co. were dispossessed.

*Proofs of foregoing denial.* — Various documents, books, letters and papers. The oral testimony of witnesses in the Hawaiian Islands, to be examined before the arbitrators, or upon commission, to be duly issued for that purpose. The constitution and laws of the Hawaiian Islands. The law of nations.

The laws, usages, decisions, interpretations, inferences and constructions, in like matters, cases and proceedings, in the United States, Great Britain and France.

#### POINT H.

The said King and Government, represented as aforesaid, further wholly controvert and deny the 8th item of claim set up by said Ladd & Co., to "damages for injuries done their character" "based upon the proceedings of the court in the so called trial of Brinsmade vs. Jarves, before Judge Andrews, in May last."

They wholly deny that any such trial has as yet taken place; they aver on the contrary, that only a preliminary question was argued necessarily antecedent to a proposed trial. They aver the legal right of the private party defendant, in all cases arising before the courts of Justice in all countries, to raise, to interpose, and to argue any question contended by such defendant, to be essential to his defence. They disclaim all right and power to control the private defences of private parties in the courts of justice.

The said King and Government deny their accountability for the issue of private causes in the judicial tribunals, whether said causes be rightfully or wrongfully instituted by their plaintiffs, or defended by their defendants; and the said King and Government deny their accountability for the course or proceedings of private actions, and for the justice of the decisions in such actions, until after the same have been appealed to and considered by the Supreme Court pursuant to the constitution and laws of the Hawaiian Islands, the like usage in such cases in the United States, Great Britain and France, and the law of nations.



The said King and Government aver, that if any injury to character has been sustained by said Ladd & Co., as alledged, it is wholly attributable to Peter A. Brinsmade, one of the members of said firm, and not to the said King and Government.

They wholly deny that "the proceedings in the said inquiry were unnecessary in the prosecution of the defence in the case, unjust, in direct violation of the constitution and laws of the Sandwich Islands, in violation of any lawfully or properly made, or obligatory protest of Mr. Brinsmade before the King and before the Judge, before whom the proceedings were had and continued, after the party plaintiff had voluntarily submitted to a non-suit, and withdrawn from the case entirely."

They deny that the said plaintiff, Brinsmade, had any legal right, under the circumstances, voluntarily to submit to a non-suit and withdraw from the case entirely, in the manner, and upon the terms intended by him. They deny that the proceedings alluded to by the said Ladd & Co., were illegally *ex parte*, uncalled for, arbitrary, of a highly offensive and defamatory character, and that they have consequent right to claim damages to the amount of \$50,000.

But on the contrary the said King and Government aver the converse of all these assertions, statements and claims of said Ladd & Co., to be true; though, if not true, they deny that they are as yet, or that they can ever become liable in damages on such account.

*Proofs of foregoing denial.* — Various documents, books, letters and papers. The oral testimony of numerous witnesses in the Hawaiian Islands, in the United States, in Great Britain, France and Belgium, to be examined before the arbitrators, or upon commission, to be issued for that purpose. The constitution and laws of the Hawaiian Islands. The law of nations.

The laws, usages, decisions, interpretations, inferences and constructions, in like matters, proceedings and cases, in Great Britain, France and the United States.

The said King and Government holding the negative of each and all of the eight foregoing controverted items of claim on the part of said Ladd & Co., claim the right under the articles of compact, and according to laws and judicial usages in like cases, of considering the *onus probandi* as falling substantially upon said Ladd & Co., and that if they the said Ladd & Co. do not, by legal proof, establish what they have alledged, it will not till then be incumbent on, or necessary, for said King and Government to adduce rebutting or counter testimony, and that on failure of such substantial proof on the part of said Ladd & Co., the items of claim failed to be proved, will be rejected by the arbitrators.

The KING AND GOVERNMENT of the Hawaiian Islands by  
JOHN RICORD, Attorney General.

HONOLULU, August 15, 1846.

## POINTS OF OFFSET

*On the part of the King and Government of the Hawaiian Islands, to the claims of Ladd & Co., asserted on the 8th of August, 1846, under a compact of reference, dated 13th of July, 1846, viz:*

## OFFSET A.

Represented by the undersigned, they claim of Ladd & Co., on book account, with interest, a balance due them of \$912,81, for money lent, paid, laid out and expended for, and money and goods advanced to said Ladd & Co., unsecured by mortgage or note.

*Proofs.*—Numerous books, papers, documents and letters. The testimony of numerous witnesses in the Hawaiian Islands, to be examined before the arbitrators, or upon commission. The laws of the Hawaiian Islands, and the inferences, decisions, and interpretations put upon like transactions and obligations, in the courts of Great Britain, France and the United States.

## OFFSET B.

They in like manner claim damages in \$4,000, for the non-fulfillment of a certain contract entered into, by the said Ladd & Co., with the King and Premier of the Sandwich Islands, for the grinding and manufacture of sugar cane, to be raised on at least fifty acres of land, for the sugar mill of said Ladd & Co., at Koloa.

*Proofs.*—Documentary evidence. Oral testimony of witnesses in the Hawaiian Islands, and in the United States, to be examined before the arbitrators, or on commission. The laws of the Hawaiian Islands.

The laws, usages, decisions and inferences, in like cases, of the United States, Great Britain and France.

## OFFSET C.

They in like manner, claim for monies received by said Ladd & Co., in the name of John Stetson, without authority, amounting to \$3,000, under a certain agreement, dated 30th of June, 1842, for the construction of a canal at Lahaina, Island of Maui, in consideration of the expenses of construction, which said Stetson was at liberty to lay a tax of \$2 upon each ship using said canal until reimbursed for said construction.

*Proofs.*—Documents, books, letters and papers. The testimony of witnesses in the Hawaiian Islands, in the United States, the laws of the Hawaiian Islands, and the decisions, inferences and constructions, in like cases, of the courts of the United States, Great Britain and France.

## OFFSET D.

They in like manner, claim damages for the non-fulfillment of a contract, made in January, 1841, by which said Ladd & Co., agreed

to furnish said Government a vessel at the Sandwich Islands. Said Government has since been necessitated to purchase another, in consequence of said breach of contract, and has expended therefor \$9,500 00.

*Proofs.*—Documentary and oral proofs. The laws of the Hawaiian Islands. The laws, usages, inferences and decisions, in like cases of the United States, Great Britain and France.

OFFSET E.

They in like manner, claim for the unpaid balance of a certain judgment confessed to and rendered by the court or Governor of Oahu, 30th of October, 1844, amounting with interest, to the 13th of July, 1846, to \$1,774 86.

*Proofs.*—Books, papers, documents and letters. The testimony of witnesses in the Hawaiian Islands, and elsewhere, to be examined before the arbitrators, or upon commission.

The constitution and laws of the Hawaiian Islands, and the inferences, decisions, usages, principles and interpretations, put upon like transactions and obligations, in the courts of Great Britain, the United States and France.

The KING AND GOVERNMENT of the Hawaiian Islands, by  
JOHN RICORD, Attorney General.

HONOLULU, August 15th, 1846.

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CLAIMS OF THE SAID KING AND GOVERNMENT

*Arising upon mortgages and promissory notes, not referred to the arbitrators, but which are here stated for their information, viz:*

1st. Amount of principal and interest due, 13th July, 1846, upon a certain mortgage, executed 4th June, 1842, to secure the payment of a certain note of concurrent date, for money lent said Ladd & Co., in their mercantile necessities, viz: \$15,797 50.

2nd. Amount of principal and interest due, 13th July, 1846, upon a certain mortgage executed 13th September, 1842, to secure the payment of paper money to be issued and put in circulation by said Ladd & Co., at Koloa, in the Island of Kauai, viz: \$1,270 75.

3rd. Amount of principal and interest due 13th July, 1846, upon a certain mortgage executed 8th day of August, 1844, to secure the payment of a certain note bearing date 27th July, 1844, viz: \$1,235 00.

The KING AND GOVERNMENT of the Hawaiian Islands, by  
JOHN RICORD, Attorney General.

HONOLULU, August 15th, 1846.

## POINTS OF STIPULATED RIGHT

*Claimed by the King and Government of the Hawaiian Islands, under the compact entered into with Ladd & Co., 13th July, 1846, to wit:*

1st. That the claims of said Ladd & Co., having been duly filed with the arbitrators, and a copy thereof, served on the undersigned, on the 8th of August, 1846, the said Ladd & Co., ceased by that act to have any further or additional claims to urge against said King and Government under the compact, and that they cannot either verbally or substantially alter, amend, or add to those so filed and served.

2d. That the arbitrators do at their earliest convenience notify the undersigned and said Ladd & Co., of the time and place, when and where they intend to meet for organization, by appointing a stenographer; and that they do then and there, afford the said King and Government an opportunity to present for their consideration the reasons firstly and secondly, urged in answer to said Ladd & Co.'s first item of claim, and that as those reasons are so urged in abatement of the entire demands of said Ladd & Co., under the compact, they having heard the respective parties upon those reasons, do decide the same before proceeding to the merits.

3rd. They claim that the non-concurrence of the arbitrators upon any one point submitted, although concurring in all others, is sufficient to refer the whole award for adjudication to the umpire, and not simply the point of disagreement.

The KING AND GOVERNMENT of the Hawaiian Islands, by  
JOHN RICORD, Attorney General.

HONOLULU, August 15, 1846.

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HONOLULU, August 18th, 1846.

GENTLEMEN,—Having received your notice that you have appointed Thursday next for the time of your meeting to organize, and for hearing the testimony to be adduced before you in the case of the submission engaged to be made to you by the Hawaiian Government and ourselves, we have to request that you will cause to be cited to appear on such day and at such place as you shall designate, the following named witnesses, viz :

Their Excellencies, Robert C. Wyllie, Gerrit P. Judd, and William Richards. The Rev. Messrs. Richard Armstrong, Lowell Smith, and S. C. Damon. Messrs. Amos S. Cook, Samuel N. Castle, Edwin O. Hall, George Pelly, Robert W. Wood, Theodore Shillaber, Robert Holt, Robert C. Janion, E. H. Boardman, John Ladd, Hiram Grimes, Fred. W. Thompson, J. B. McClurg, Andrew Johnstone, Gorham D. Gilman, H. B. Winslow, James Ma-

kee, Eli Jones, Leleiohoku, Wm. French, John Meek, Jr., John Meek, Marshall Johnson, Jr., George M. Robertson, Joseph O. Carter, Hooliliamanu, John G. Munn, Milo Calkin, Thos. H. Stevens, Henry Christie, Thomas Cummins, John H. Kekuanoa, Wm. Paty, Alex. G. Abell, Henry Sea, Robert Boyd.

We are gentlemen, very respectfully,  
(Signed,) LADD & CO.

Messrs. S. H. WILLIAMS, & J. F. B. MARSHALL, Arbitrators.

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## PROCEEDINGS OF ARBITRATORS.

### FIRST DAY.

Pursuant to appointment of the arbitrators chosen by the Government of the Hawaiian Islands and Messrs. Ladd & Co., the first meeting was held at the rooms recently occupied as the U. S. Commission, on Thursday, August 20th, 1846, at 10 o'clock.

C. Gordon Hopkins, Esq., was appointed by the board as stenographer, but was unable through illness to attend.

The names of the witnesses summoned on behalf of Messrs. Ladd & Co. were called over. Messrs. Armstrong, Pelly, Shillaber, Johnstone, Winslow, Leleiohoku, John Meek, G. M. Robertson, Hooliliamanu, Kekuanoa; absent. The witnesses were informed that they could retire, and that the Board would notify them when their attendance was necessary.

A draft of rules was then submitted by the arbitrators to the parties, as proposed for the government of the board. Mr. Ricord objected to the clause providing for the taking testimony "in these Islands alone," but finally waived his objections for the time being.

Mr. Ricord claimed to be heard first on the two first reasons urged by him in answer to the first item of claim of Ladd & Co., as those reasons were urged in abatement of their entire demands. Some informal discussion then arose between the parties on this point, but in the unavoidable absence of the stenographer, the Board appointed Monday next, at 10 o'clock, for the hearing of the parties, and agreed to notify them on Saturday of its decision as to whether Mr. Ricord shall be heard first on the point which he claims, or whether Messrs. Ladd & Co. shall proceed at once to the proofs of their claims.

Court adjourned at 2 o'clock.

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HONOLULU, August 22d, 1846.

SIR,—The board of arbitrators chosen under the compact of July 13th, 1846, will hear the respective parties on Monday, Aug.

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24th, upon the reasons, firstly and secondly, urged by yourself in behalf of the King and Government, in answer to Messrs. Ladd & Co.'s first item of claim.

(Signed,)     STEPHEN H. WILLIAMS, } Arbitrators.  
                      "     JAMES F. B. MARSHALL, }

JOHN RICORD, Esq.,  
Attorney General, &c.

A similar notice sent to Messrs. Ladd & Co.

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### SECOND DAY.

The Board met on Monday, August 24th, at 10 o'clock. The stenographer being still sick, Mr. Bastian was appointed clerk *pro tem*.

Mr. Ricord wished to know if any arrangement had been made for furnishing funds to meet the expenses of the arbitration. He was informed by the Board, that the matter had been arranged so far as Messrs. Ladd & Co. were concerned. Mr. Ricord said he would arrange the matter so far as Government were concerned.

The Rules as adopted by the Board were then read:

### RULES.

The undersigned, arbitrators chosen by the Hawaiian Government and Messrs. Ladd & Co., under the compact of July 13th, 1846, have adopted the following Order, to be observed by the parties engaged in the controversy:

1st. The party to whom belongs any affirmation or averment in the claims or counter claims filed, or to whom the affirmation to any question in discussion belongs, or the party raising any question of dispute or objection, is to occupy the floor for the purpose of making good his affirmation or averment, without interruption from the party in the negative; the party in the negative, is to follow in like manner, without interruption in rejoinder, when the first party shall again be heard, in close of the debate. This order to be strictly adhered to. The parties to confine themselves in speaking, to the question or objection or point under discussion. While speaking, the parties to remain at their respective tables.

2d. The party introducing a witness, to examine such witness at full length, and the party opposed, to cross examine each witness at full length.

3d. The debates of the parties upon the sum of the evidence to be conducted upon each point of claim, denial, offset, and counter claim separately, on days to be assigned by the Board for each respective question.

4th. Charles G. Hopkins, Esq., to oversee the printing, (if necessary that the records should be printed,) of the transactions, testimony, proceedings and debates, under the supervision of the Board.

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5th. Parties to obtain process for the *subpœna* of their witnesses, or commissions to take testimony in these islands alone, as wanted, from Judge Andrews. And due notice is to be given to the arbitrators at the previous session, of the names of witnesses to be examined at the succeeding meeting.

These rules will be altered or amended if necessary, by the Board.

SPEPHEH H. WILLIAMS, } Arbitrators.  
JAMES F. B. MARSHALL, }

After the reading of the rules, Mr. Ten Eyck, the Commissioner of the U. S., then rose and said :

Gentlemen Arbitrators,—before the Attorney General shall have commenced his argument upon the objection, raised by himself, to your proceeding upon the investigation of the merits of the controversy between the Hawaiian Government and Ladd & Co., I deem it proper to state, that at the urgent solicitation of Messrs. Ladd & Co., I have consented to appear here, during the argument of this “plea in abatement,” as the Attorney General styles his objection,—to see that the rights and interests of Ladd & Co. are properly regarded, and that no legal or technical advantage is taken against them under the soleinn treaty compact entered into by them with the sovereign power of this nation. I am informed by Ladd & Co., and know the fact by my own observation, that a *technical objection, based upon an idle form*, is raised by the Attorney General of this Kingdom, on the part of the Sovereign against his own treaty, which if decided by you, gentlemen, in his favor, would necessarily invalidate and render nugatory the whole instrument. In other words, that the Government of this nation, upon a very slight pretext, would avoid their sacredly plighted faith to American citizens, who have honestly trusted that faith.

I was the medium through whom those American citizens negotiated this treaty. I advised them that it was honest and fair, that the Government were, equally with themselves, honestly desirous of having an amicable adjustment of all difficulties existing between them, and that they might safely subscribe the compact. I acted in good faith myself, as the friend of both parties, without reserve or duplicity, and I had every reason to believe that the Attorney General did the same. I supposed that we understood each other perfectly, and that technical or other objections of form to the plain, honest, common sense observance of the treaty, would be the last thing sought for, or urged by the sovereign power which had executed it.

Having therefore assisted in negotiating this treaty—it being a treaty, as sacred as if made with the Government of the United States, instead of her subjects,—having advised its execution on the part of Ladd & Co., I feel in duty bound on this occasion, as on all others, to see that it is fairly sustained in all its parts—that no technical advantage is taken by this Government to the injury of Ladd & Co.—



that the treaty is honestly executed, according to its real intent and meaning, and that the rights and interests of Ladd & Co., in virtue of the treaty, are inviolably maintained.

After I have fulfilled what I deem my duty in this regard, and the parties shall have been permitted fairly to open the merits of the case for your examination, I shall then leave it in the hands of those interested, not doubting that you gentlemen, will give both parties a patient hearing; that you will duly weigh and carefully consider all the facts and the testimony which may be adduced before you, and that you will agree upon such an award as justice and your own consciences will approve.

Mr. Ricord said that he was gratified to know that by the rules which the arbitrators had adopted he had the final reply, as the other party had many counsel.

The Board stated that Mr. Brinsmade having waived his objections to Mr. Ricord's being heard on the "plea in abatement," they had decided to hear him, without considering the question of his right under the compact of July 13, 1846, to set up such a plea in defence.

Mr. Ricord then rose and said :

I alledge that Messrs Ladd & Co. have filed their claims in a different manner from that stipulated for in the compact. I insist that there was a mutual understanding apparent upon the face of the compact, in regard to the kind of claims which were to be set up under it. That Ladd & Co. had necessarily engaged to tender to the King and Government such an issue as would be in unison with the question embodied in the compact upon which alone the arbitrators had power to decide. To prove this I propose to consider,

1st, *The motives of the compact.*—These are recited in the preamble. All preambles have this intention; they recite the state of things calling for what follows. This is generally the case with laws as well as with contracts. Laws are public contracts, and obligatory as such upon all members of the body politic, who in view of them, contract with one another through the medium of the legislature or law making power provided by themselves for that purpose. In laws, the Government undertakes specifically to do its part, whatever that part may be, and the governed through their representatives undertake to do their part specifically. Specific performance is thus indispensable on both parts. Most of the breaches of law are specific; they are oftener breaches of the letter of the law than of its spirit or intention. The spirit and intention of a law, is reasoned from in mitigation of its rigors, but not in excuse for its non-fulfillment. This is proper in all cases arising under breaches of such public contracts as are imported in acts of the legislature, and it is mostly allowed in criminal cases, for in them the whole community is more largely interested, and an extension of grace and clemency is upon the part of the injured mass. The right to enforce a specific performance be-

longs to the party towards whom the contract was violated, and the right to excuse from the non-performance of a specific contract, also belongs to the same party. The party who violates a contract has no right to insist upon its not being enforced specifically. He may show that he has performed it specifically ; or that it was capable of being understood in two or three ways, and that he performed it in one of those ways. Such a defence to the contract of a law, is often made, both civilly and criminally. But in that case, the party claiming such a defence ought in common sense to prove from the law or the contract, that the mode in which the fulfillment took place was a reasonable understanding of the law or contract, as well as the way in which it is claimed he ought to have fulfilled.

Such is also the doctrine of private contracts. They are first and primarily to be fulfilled according to the letter if reduced to writing ; because that is presumed to contain all that the parties had in view when they made it. (Plowd. 140, 288.) If however the letter be ambiguous, or obscure in its phraseology, then and not till then, does the law allow that letter to be construed by the motives, inducements and previous understandings of the parties to that contract. This is no less the case in interpreting a law. If a law be ambiguous, uncertain or obscure, its true meaning may then be sought in the motives which actuated the legislature in passing it, and the objects which were sought by its passage ; for they are among the motives. Blackstone says, vol. 1, p. 61, " When the words are dubious, the most universal and effectual way of discovering the true meaning of a law, is by considering the reason and spirit of it, or the cause which moved the legislature to enact it." The same principle is asserted in 3 Maule and Selwyn, 510.

A contract, is a compendious term to signify an agreement or a compact—a treaty—a convention—a paction—arrangement—understanding, or mutual obligation on the part of opposite parties.

Fletcher v. Peek, 6 Cranch, 37. Marshall on the Constitution, pp. 135, 190, 627, 645, 646. Oliver Summary, part 1, Chap. 1.

It is so treated in all books upon that subject in all countries. But there is a difference in solemnity between contracts. Those entered into by sovereign states with one another, are the most solemn of all, after the implied contracts of all monarchs with the King of kings to govern in his fear. He holds nations to a specific performance of of this tacit compact, and judges of its breach by the notoriety with which the words are engraven on their hearts and consciences. If there exists obscurity or ambiguity in a moral duty, that will be we trust allowed in mitigation of the law of nature but the compact would be broken none the less. Next to contracts between sovereign states, stand in point of obligation and importance, contracts between sovereign states on the one hand, and private individuals on the other. These are a well known class of contracts. They are

spoken of by international writers as private treaties. The Hawaiian Statutes, part 2d, sec. 4, merely declaratory of the law of nations, requires these to be ratified before they are obligatory, and when so ratified they become by the law of nations obligatory specifically upon both parties.

Other contracts between private parties are governed by analogous rules of interpretation with those that govern the interpretation of treaties, and are equally binding upon them if their specific fulfillment be demanded. Kent has this remark touching the analogy of treaties and private contracts: "Treaties of every kind, when made by the competent authority, are obligatory upon nations as private contracts are binding upon individuals, and they are to receive a fair and liberal interpretation, and to be kept with the most scrupulous good faith.— Their meaning is to be ascertained by the same rules of construction and course of reasoning which we apply to the interpretation of private contracts." Vattel p. 290, and 1 Wheaton, p. 323, concur in the same view regarding this analogy.

That the compact of 13th July, 1846, is a contract cannot be denied. That it is obligatory as a private treaty cannot be denied. It was carefully entered into after much careful consideration, as I will show by the letters, minutes and papers interchanged in concluding it, which letters I now hold in my hands, and offer to read in evidence.—

[Mr. Ten Eyck here rose and objected to the introduction or reading of any letters, papers or documents relating to the negotiation between the parties prior to the execution of the compact. That the compact must stand or fall by itself, it is clear and intelligible, and can be easily comprehended, and the intention of the parties can and must be gathered from the compact itself.]

The arbitrators decided that the letters, &c., offered by Mr. Ricord could not be read to explain the motives of the parties in entering into the compact. That they were to be governed by and to ascertain the intention of the parties from the compact itself.

Mr. Ricord continued—]

It does not lack a single formality of the *lex loci contractus*, i. e., it is on stamped paper, according to the laws of the Hawaiian Islands, and has received the King's ratification in privy council of his chiefs.

Up to the breach on Ladd & Co.'s part, to be presently noticed, the King and Government have most carefully fulfilled all their stipulations towards Ladd & Co. to the very letter. On the 13th of July, I filed with Judge Andrews an original of the triplicate and served upon Ladd & Co. and upon the Minister of Foreign Relations two other sets of that original as had been agreed upon. It will be perceived how scrupulously the oath administered to the arbitrators, by the stipulated Judge conforms to the compact, and that the King

and Government carefully fulfilled the stipulation in regard to the time of filing their counter claims and defences, and with what precision they cross or controvert the claims of Ladd & Co.

These facts serve us two purposes in this inquiry: 1st, they show our specific understanding of the specific and exact nature of the things reciprocally agreed to be done under the compact, and of the way in which they are to be done; and 2d, they show that we come before you with clean hands, a thing both the rules of law and equity require of us. Were we to come insisting that the other party should strictly comply with his share of a contract, while at the same time it was apparent we had left unperformed or had misperformed some part of the same contract, we might expect this or any other court, whether legal or equitable, to retort upon us "do unto others as you would that others should do unto you." But not so; you will observe that we have performed thus far all our portion of the contract to the letter; and hence, in asking that the other party do likewise, we ask nothing unreasonable.

There are two parts to every contract like this compact having in view inquiries into claims. One of these is the kind of facts to be inquired into; and the other, is the way of inquiring into them. If the contract be one of submission to arbitrators, it is either a general submission of all matters in difference between the parties, or it is a special submission of specified matters. It either leaves the general discretion with the arbitrators to decide in any way they please, or, it specifies the field of their inquiry and the nature of their award.

I contend this to be a special submission. 1st, Because the compact recites the particular things submitted. 2d, Because the compact excepts certain things from the submission. 3d, Because the compact reduces to the exact form of words, the question to be considered by the arbitrators, merging the thing specially submitted into that question. 4th, Because the compact expressly requires the arbitrators to decide first upon principles of law, if possible, and next upon principles of equity, if legal principles cannot be found. Upon one or other of these principles, the parties contract to have the specially submitted matters decided in conformity with that question. It is expressly agreed, also, that the arbitrators shall be restricted to not deciding without legal proof; that they are to afford the parties full latitude of debate; and that in case they are in doubt, they may refer to Judge Andrews for a solution of that doubt. These are agreements between the parties, and form part of the contract by which the Board of arbitrators exists. These are not optional with the parties, or with the board, but imperative; any departure from these, it is understood, in law would vitiate their award and subject it to be set aside, they being restrictions and boundaries set upon the powers of the Board, by express contract. The compact is the constitution of the arbitrators; they are not to permit parties claim-

ing under it, to violate it, for such would be a blow aimed by the parties at their judicial existence; neither are they to violate it themselves, for its violation by themselves, would be a suicidal act. Hence, the numerous reasons for setting aside the awards of arbitrators by the courts, both in Great Britain and the United States. For instance, it has been decided by the Supreme Court of the United States, in the case of *Lutz v. Linthicum*, 8th Peters Report, 165, that "without question, due notice should be given to the parties, of the time and place of hearing the case, and if the award be made without such notice, it ought, upon the plainest principles of justice, to be set aside. If no notice is in fact given, and no due hearing had, the proper mode is to bring such facts, not appearing on the face of the award, before the court, upon affidavit, and motion to set aside the award." And again, in the case of *Kelly v. Johnson*, 3 Washington, C. C. R., page 45. "Where referees make a plain mistake in a matter of law, it constitutes a valid objection to their report." And again in *Lyle, et al. v. Rogers*, 5th Wheaton's Reports, 394, that "where claims against a party, both in his own right and in a representative character, are submitted to the award of arbitrators; it is a valid objection to the award, that it does not distinguish precisely, between monies which are to be paid by him in his representative character, and those for which he is personally bound." And again, in *Peisch v. Ware, et al.*, 4, Cranch, 347, it is asserted that "equity either enforces an award as it is made, or sets it aside if defective."

2d. *The terms of the compact.*—The terms of this submission are that the parties are to be subject to legal and equitable principles, all their "unsettled book accounts, unliquidated and unascertained claims, specialty contracts, specialty agreements, and demands founded upon specialty existing between them, on the 13th of July, 1846, (except mortgages) and all their parole agreements and contracts, (except promissory notes,") in such a form and manner, to the arbitrators, as will be consistent with the nature of the question into which the parties have agreed to merge them, or in other words, in which, they have agreed that those several causes of difference shall be engulfed or swallowed up. Those matters are agreed not to be brought forward, except in enhancement of the question, which is in these words, "How much ought the Hawaiian Government to pay said firm of Ladd & Co., for all their property, of whatever name and kind, tangible and intangible, including contracts of every description, taking into consideration whether they, the said firm of Ladd & Co., are entitled to indemnity of said Government, for any losses or damages they may have sustained, in consequence of any illegal acts done, or wrongs committed by the said Hawaiian Government."

That question pre-supposes Ladd & Co., to have some tangible or some intangible property, to be augmented in its real or intrinsic value

by a suppositious or hypothetical value derived from injuries done by unlawful acts. In thus merging all their distinctive claims into a question of the value of property, Ladd & Co. covenant to bring forward some property, tangible or intangible, in order to give the arbitrators jurisdiction, and then to enumerate the unlawful acts by the commission of which the property described, has become enhanced in value to the extent of the proven injuries. In proof of this constructive undertaking, I am prepared to prove, and request leave to prove, the pains with which they selected their questions for the arbitrators from two questions proposed to them by me. They not only deliberately made that selection, but they conducted the negotiations in view of that selection through a professional gentleman. We have a right to conclude that they studied the necessary requirement of that question; or at least that they have been in reach of legal advice had they chosen to avail themselves of it. Why did Ladd & Co. reject a question of damages, if they wished to claim damages and accept one of valuation of property instead? They had their option. Had we engaged to meet them here upon the question of damages, a bill of property valuation, would have been an equal departure from the contract, and consequently a violation of its terms precluding them from the right to claim. The question for the arbitrators to consider is quoted in the compact. Every previous and after undertaking of either party is directed to that question and grammatically correlated to it. The parties afterwards mutually covenant to abide and fulfill an award made upon that question and not upon a different or other question. "To this end," that is, to the end of an award upon the value of their property in accordance with that question, as recited in the agreement, "Ladd & Co., agree to file a detailed statement of the grounds, reasons and items of their claims against said King and Government." They had previously agreed that their claims should be the value of their property tangible or intangible, and hence of necessity, the detailed statement of the grounds, reasons and items of their claims, must be something of this nature: i. e. the whereabouts and extent of their lands, if any; the title under which they hold or claim any lands, and the real or supposed value of them; the nature of their personal property proposed to be bartered away with the King and Government; its situation, title or value, real or supposed; together with a list of the "illegal acts done or wrongs committed by the said Hawaiian Government." A list of such illegal acts and wrongs would have a most intimate and immediate connection with the value of the property; for, the losses and damages Ladd & Co. may have sustained by reasons of such illegal acts and wrongs, are most expressly agreed to be added to the intrinsic value of any property, tangible or intangible, including contracts they may own or possess on the 13th of July, 1846. Hence they can rightfully set up no claims for losses or in con-

nection with some property, either tangible or intangible, including contracts. They may have suffered injuries, but unless they have some such property as that described in the question, they cannot recover damages for those injuries, because that is the way in which the parties have agreed their damages if any shall be recovered.—The arbitrators have no power by the terms of the compact to award finally upon any thing but the value of property enhanced by losses and damages, the legal consequences of illegal acts done or wrongs committed by the Government: and this is what calls into consideration the nature of the losses and damages, and the illegality of the acts—these are primary questions even to the losses and damages, all in view of the augmentation of the value of the property. If there be no property to be augmented by those losses and damages, it were vain and futile to enumerate or prove them; for they cannot in that case be acted upon. I contend that therefore Ladd & Co. have expressly stipulated in view of the question submitted to the arbitrators, to aver themselves the owners of some property, tangible or intangible, including contracts, and to place upon it a nominal value, equal to its intrinsic value and the supposed amount of their losses and damages. This is due to their adversary; for we have a right to deny their ownership of the property alledged, and also to deny its value, which would make a great difference in the nature of the issue to be joined. One issue cannot be joined either at law or in equity, and another tried.

Such a course would lead to deception, and would mislead parties to a mutual compact, who look to that compact, as the arbitrators do, for guidance and assistance; not for confusion, misunderstanding and embarrassment.

Let me examine for a moment, the kind of award agreed upon, and whether the method of filing the claims would effect that award. The arbitrators are to determine upon legal and equitable principles, "how much ought the Hawaiian Government to pay said firm of Ladd & Co., for all their property, of whatever name and kind, tangible and intangible, including contracts of every description;" in doing which, they are to "take into consideration, whether they the said firm of Ladd & Co., are entitled to indemnity of said Government for any losses or damages they may have sustained in consequence of any illegal acts done, or wrongs committed by the said Hawaiian Government." The compact is in other words a contract on the part of the King and Government with Ladd & Co. to purchase any property, tangible or intangible Ladd & Co. may prove themselves entitled to the possession of on the 13th of July, 1846, at a price, which in the estimation of the arbitrators, the principles of law and equity been taken into consideration, is deemed by them commensurate with any losses or damages which Ladd & Co. may have sustained by unlawful acts done, or wrongs committed by the



Government. To award damages under such a special contract, would be a departure from the terms of the submission, for which the award would be liable to be set aside in any country. Hence, the issue between the parties under the compact, must be such, as will enable the arbitrators' decisions upon that issue, to square precisely with the question submitted to them by those parties. For the parties to submit one sort of question to be awarded upon, and to join issue upon quite another, would be a departure from their duty towards the arbitrators. If the allegation be of property, tangible or intangible, augmented in value by losses or damages, the consequence of unlawful acts, then the denial being in view of the allegation, would form an issue, which, being decided by the arbitrators, whether upon principles of law or of equity, would yield an award upon the question expressly submitted. But if the allegation be one of injury or damages, and the denial be no injury or no damages, the issue of damages, or no damages, would not be the kind of issue agreed to be formed by the parties; and if decided by the arbitrators, it would not satisfy the question submitted to them by the contract. It would, by the act of the party tendering such an issue, be an invitation to the other party to depart from the question, and an invitation to the arbitrators to depart in their award from the terms of the submission; on account of which departure, the award being afterwards set aside, the party tendering such an issue, should be the sufferer. "No man shall take advantage of his own wrong." It is thus expressly agreed by the parties, that the issue and the question shall conform—shall be of the same kind and class. How else can the arbitration perform what they have sworn to perform by accepting the arbitration on the terms of the compact creating them. Manner, as well as time, are expressly agreed upon by the parties to it. No one can pretend that we were bound to receive the claims of Ladd & Co., after the ten days allowed them by the compact had expired, although their claims may have been ever so good and just and equitable. No court in the world could compel us to receive such claims on the eleventh day, because the act of Ladd & Co., in not fulfilling their engagement, would have left us free. So it is with the manner of the presentation, if it is clearly agreed upon; and so also with the matter of presentation.

Men must specifically fulfill their contracts when so intelligible as this; and courts both of law and equity, will compel them. It is upon this specific agreement or contract, as to time, that we found our claim of stipulated right, that the party cannot amend, alter, or add to the allegations or claims, as filed by him, within the ten days. Both parties mutually agreed that ten days would suffice to study the presentation of their claims and defences, and to draw them up in the form in which they meant to abide by them, under the compact, and yet within the purview of the question submitted. Ladd & Co.

were not bound to consume the whole ten days, and neither did they, though they might; and that they were negligent, precipitate and unguarded in this respect, was not our fault. The arbitrators were sworn in on the 5th of August, and on the 8th, the claims of Ladd & Co. were served upon me. They might have availed themselves of seven more days for reflection and consultation with their counsel learned in the law. My ten days commenced by contract from the day of the receipt of their claims, and the King and Government through me, used all diligence to comply with the contract by filing the defensive points, on the 15th and 17th. There seems to be no ground for either party to claim of the other the right to amend; and what the parties cannot claim in right of one another, the arbitrators being appointed to carry out the compact, cannot compel. It would be contrary to the principles both of law and of equity, so to do. The only action of courts in regard to the fulfillment of contracts is, their specific performance; that is, they will compel parties who deviate to the detriment of others, to perform strictly, the undertaking; but they will not compel to the performance of a thing contrary to the stipulation of the contract. To allow the question of damages tendered by Ladd & Co., to be tried under the compact, would be to compel the King and Government to an unspecific performance; because their tendered issue is a departure or variance from the compact. Such compulsion would be an enormous departure both from the rules of law and of equity. If their tendered issue be received to be acted upon, *e converso*, I am compelled to try a thing not agreed upon for trial. It is of this breach of the contract of submission that I complain. I have taken advantage of it in abatement. Abatement is the plea to all matters, whether of form, misnomer, or variance in pleading. These must be taken advantage of in the outset, before reliance is had upon the merits. I have, therefore, before proceeding to traverse the merits, alledged my right to consider and urge the abatement of Ladd & Co.'s entire claims as not conformable to the contract. Abatements are of two kinds, *curable* abatements and *fatal* abatements. An abatement is curable when it arises for misnomer, or for some verbal error, and where the matter is not being tried by express agreement, in a court created by contract of the parties; for courts of general judicature have general powers to do general justice and general equity between parties generally, by virtue of the statute laws creating them. But even in the courts of general law and equity jurisdiction, abatements striking at the root of the matter, are fatal. How much more when in a court of limited and special jurisdiction like this Board, whose duties are confined by express agreement of the parties themselves, to a certain enquiry and no other. Here, certainly the objection is fatal; for no power is conferred upon the arbitrators to enlarge or contract the terms of their constitution. A general submission might have left

room to infer a latitude of power with the arbitrators, but not a special submission.

Mr. Ricord having closed, Mr. Ten Eyck rose, and addressing the arbitrators said:—

Gentlemen Arbitrators,—I have already advised you of the reasons why I have felt called upon to appear before you, in support of the treaty, which it is now sought to abrogate and render nugatory. I shall, therefore, without further preface, proceed at once to an examination of the question presented for your determination.

How stands the question before you? As I understand it, it is as follows:

By the terms of the compact, articles of submission, contract, or treaty, creating this board of arbitrators, Ladd & Co. agreed to “file with said arbitrators a detailed statement of the grounds, reasons and items of their claims against” the King and Government of the Hawaiian Islands, within a certain number of days.

In pursuance of this agreement they filed with you, their claims against this Government, within the time specified, and amongst others they claimed,

“1st. The valuation or price of our properties and privileges of every kind, situated and possessed by us upon the Sandwich Islands, prior to the 1st day of January, 1842.

“The grounds of this claim are based upon two certain contracts, the one executed on the 17th May, 1843, in the city of Brussels, in the Kingdom of Belgium, between the Sandwich Island Government, the Belgium Company of Colonization, and ourselves; and the other executed on the 24th November, 1841, in Lahaina, Sandwich Islands, between the Government of the Sandwich Islands and ourselves.

“Our reasons for this claim, consist in the fact as we contend, that the Sandwich Island Government has made itself liable for the full value of such properties and privileges, by infringing said contracts and rendering their execution on our part impossible.

“The items of their claim, consist in the price or amount agreed to be paid to us for all the properties, privileges, transfers and concessions made, or agreed to be made by us, in pursuance of said contract of May, 1843, amounting to \$200,000.”

The Attorney General of this Government, in filing in with the arbitrators, the “points of controversy, offset and defence” of his Government against the claims of Ladd & Co., as agreed upon in said compact, makes the Government in his “point A, deny item 1st of the claim of Ladd & Co., to wit:”

“The valuation or price of their properties” &c., “and consequently with said item, they deny all other items of said claim as filed.”

“Because 1st. The true meaning of the compact of 15th July,

1846, does not admit of such an item as a first, and consequently, does not extend to the other items of that said claim as filed."

"The price of any property said Ladd & Co. may have possessed prior to the 1st of January, 1842, is not agreed to be submitted to the arbitrators, but the price of any property they may now possess."

"Ladd & Co. not alledging the ownership or possession of any property, tangible, or intangible, on the 13th July, 1846, &c., the King and Government, do not understand the said first item of claim, nor by consequence the others, to be within the true meaning of the articles of compact, and hence dispute the propriety of Ladd & Co.'s claims to damages, *in toto*," and

"Because 2d. The grounds upon which said Ladd & Co.'s first item is alledged to rest, are "two certain contracts, the one executed" &c. &c.

"It is, and was, the duty of Ladd & Co., under the compact primarily to have averred and offered to prove the *bonâ fide* and legal ownership, by them, of some property, either tangible or intangible, including contracts in the Hawaiian Islands, and to have alledged some value, real or hypothetical, to said property," &c.

"Not having done this, their first, and consequently all subsequent claims must fall to the ground by the very words of the compact."

The Attorney General has further contended, in his argument in support of these views, that Ladd & Co. having as he alledges, thus failed to file their claims in the proper form, have violated the compact or submission; that this objection being valid and being decided in favor of this Government, the result must be to render the compact nugatory and inoperative, and that Ladd & Co. must be forever barred from prosecuting any further claim against the Government.

I propose in the first place to consider very briefly, the object of this compact or treaty.

Why was it entered into at all by the parties?

I answer—simply upon the ground of all submissions, viz: to put an end to all quarrels, controversies and contentious demands, which were difficult, and almost impossible to be adjusted in a trial at law, and to avoid a lengthy, and in all probability a disagreeable and unsatisfactory diplomatic correspondence on the subject, and to have this done in a *peaceable and domestic or friendly manner*, before an honest, impartial, mutually friendly and just tribunal, *vide* 3d Black. Com. pages 17, 18.

What does the act of submission *clearly and necessarily imply*?

I answer, nothing more or less than a desire for an *amicable settlement of disputed matters, existing between the parties*, which are *uncertain*, and which the parties are anxious to have *ascertained and liquidated by a friendly, peaceable and domestic tribunal*; *vide* Jacobs' Law Dictionary, title "Award," p. 191.

The preamble of the compact expresses this intention in almost this precise language.

For what purpose was this submission entered into?

Certainly not to add to the difficulties, already existing between the parties, by a new and discordant element of contention, but to *adjust and settle all difficulties, and contentious demands.*

Are the Attorney General's objections, and his mode of procedure in the outset, calculated to put an end to the controversies and contentious demands, acknowledged by the preamble and the compact, to exist between the parties? Are they calculated to give effect to the necessary implication created by the act of submission? Are they likely to effectuate the purposes had in view when this submission was entered into? Do they look like an honest disposition to have an *amicable settlement*?

Your own sense of propriety and justice, must suggest to you, gentlemen, a ready answer to these questions.

Thus much for the act of submission.

I propose now, gentlemen, to examine the *submission* or *compact itself*, and ascertain if possible, what has been thereby agreed to be submitted to your determination. What was the evident *intention* of the parties when they executed the instrument? Certainly they did not intend that all that ink, and stamped paper, and sealing wax, used for, and the time necessarily occupied in drafting, the compact, and in making copies thereof, the important acts of procuring His Hawaiian Majesty's approval thereto, of filing the same in the archives of the "Foreign Office," and with the circuit court of this Island, of publishing the same to the world, as a "treaty," through the Government Gazette, "By Authority," and of administering a solemn oath to the arbitrators, (*as provided in the compact itself*) impartially, fully and patiently, to *hear, consider and adjudicate the matters in controversy*, between the parties, &c; I say, the parties certainly could not have intended that all this was done for a mere joke, a pastime, and that really it meant nothing at all.

No, gentlemen, they had some important object in view; they intended when they selected you as arbitrators between them, to give you something to do. The compact clearly, intelligibly, and without ambiguity, indicates what that object was, and what they desired you to do for them, they being unable to do it satisfactorily themselves.

The preamble to the compact states the object simply and plainly to be, that Ladd & Co. claim to have *demands*, (i. e. *rights* which are due or owing, or claimed to be due or owing to them, either expressly or by implication—in common parlance, monies or any other valuable thing, which a person has a right, or a supposed right to seek or ask for), they claim, then, to have *demands* against the Ha-

waiian Government, which demands, the Government deny, but which they are both desirous should be ascertained, liquidated and settled, upon legal and equitable principles.

Here then it is admitted *by both parties*, that there is an *uncertain matter of right*, or claimed right, *existing* between them, and about which they differ in opinion, but which they are both anxious to have adjusted—settled fairly and honestly.

“They have therefore,” so reads the first paragraph of the compact, “respectively agreed to submit said demands, *of whatever name and kind soever*, up to the date hereof,” (13th July, 1846, the date of the compact) “*and all claims for damages arising under the same, either in law or equity*, to the final award, order, arbitration, determination and judgment, under oath, of Stephen H. Williams on the part of said Government, and of James F. B. Marshall on the part of said Brinsmade, Ladd & Hooper, arbitrators indifferently chosen by the respective parties hereto, and the impartial umpire” agreed upon in said compact.

Is there any ambiguity in these words? Is there any doubt as to the meaning of this language?

It means nothing, or it means that you, gentlemen arbitrators, and if you disagree, then the umpire shall receive and determine, upon *any demands* or claim of *damages, arising upon any demands* which Ladd & Co. have and shall present against this Government. Are these demands restricted as to the form of presentation to you, or are they limited as to time, number or amount? Not at all.

But, says the Attorney General, by the next paragraph of the compact Ladd & Co. are restricted and have merged all their demands in the following question: “How much ought the Hawaiian Government to pay said firm of Ladd & Co. for all their property of whatsoever name and kind, tangible and intangible, including contracts of every description, taking into consideration whether they, the said firm of Ladd & Co. are entitled to indemnity of said Government, for any losses or damages they may have sustained in consequence of any illegal acts done or wrongs committed by the said Hawaiian Government.”

Now what is the reasonable and common sense meaning of this question, or of its introduction into the compact?

The Attorney General has well answered, when, in his argument, he asserted, that it was intended to define the measure and duties of the arbitrators.

For, I remark, it had *already*, by the first paragraph of the compact been agreed, that *all of Ladd & Co.’s demands against the Government* should be submitted to the arbitrators for their determination and judgment.

This question then, was intended simply as an index, a guide to the arbitrators, as a “defining of their measure and duties,” *in making up their award*.

It means nothing more or less, than that the arbitrators, in adjudicating upon Ladd & Co.'s demands, "of whatever name and kind soever," were to determine the *fact*, whether those demands are valid: whether this Government has illegally or wrongfully deprived them of their properties and privileges, and if so, a determination of the value of those properties and privileges, of which they have been thus deprived; and also whether, in consequence, they have sustained any loss or damage.

Is not this the common sense meaning of the question? Was not this the evident intention of the parties, deducible from the whole scope and wording of the compact? Does this make it necessary that Ladd & Co. should present their demands to you in any particular *form of words*, to enable you to arrive at the *fact* whether this Government owes them any thing? Most clearly not.

But says the Attorney General again, you, Ladd & Co., have agreed to file with the arbitrators a detailed statement of the grounds, reasons and items of your claims. True,—and they have done so. Yes, says the Attorney General, but you have not demanded from us the price of any property owned and possessed by you on the 13th July, 1846, nor have you averred or offered to prove that you were the legal or *bonâ fide* owners of any property in the Sandwich Islands, therefore your claims or demands all fall to the ground.

Now let us see if Ladd & Co., have not claimed of this Government some legal *property*, belonging of right to them.

They "claim 1st, the *valuation or price* of our properties and privileges of every kind, situate and possessed by us, upon the Sandwich Islands prior to the 1st of January, 1842."

If then, they prove to your satisfaction, that they did own property on these Islands prior to January 1842, that it was worth \$200,000, that this Government have illegally and wrongfully deprived them of the possession, and have themselves taken possession and assumed the ownership of this property, that the Government have thereby made themselves liable to Ladd & Co. for its full *value*, that in equity and good conscience the Government owe Ladd & Co. *that amount of money*, for this purpose, I ask, whether in the restricted sense of the terms insisted upon by the Attorney General, you would not be bound to say that the Hawaiian Government ought to pay Ladd & Co. thus much for that property? and whether in the very words of the question, in the compact, this valuation or price is not emphatically and legally "property, of some name or kind, tangible or intangible," due and owing, and consequently legally owned by Ladd & Co. on the 13th of July, 1846, when they entered into this compact?

Ladd & Co., "ground this claim upon two certain contracts," made with this Government, "The reasons for the claim" are, that this Government has made itself liable for the full value of these



properties, &c., by infringing said contracts and rendering their execution impossible on the part of Ladd & Co.

The Attorney General says, Ladd & Co. cannot claim this as property, until after judgment obtained, and he cites 2d Blackstone's Com., p. 437, to prove that damages are not property, until after verdict and judgment. This may be good law, but unfortunately for the Attorney General, the authority, like many others cited by him, has no applicability to the point under discussion.

Ladd & Co. do not by this first item of their demands, claim damages. They claim the value or price of property &c., on account of the violation by the Government, of certain contracts. In other words, they claim what the law denominates *property in action*, as distinguished from property in possession. If the Attorney General had looked to the preceding pages of the same volume from which he has quoted, he would have found at page 397 the following: "upon all contracts or promises, either express or implied, and the infinite variety of cases into which they may be spun out, the law gives an action of some sort or other to the party injured, in case of non-performance; to compel the wrong doer to do justice to the party with whom he has contracted, and on failure of performing the thing he engaged to do, to render a satisfaction equivalent to the damage sustained." "But while the thing, or its equivalent remains in suspense, and the injured party has only *the right* and not the occupation, it is called a *chose* in action; being a thing rather in *potentia* than in *esse*, though the owner may have as *absolute a property* in, and be as well entitled to such *things in action*, as to things in possession."

Ladd & Co. are not restricted by this question, to the ownership of any particular property, or to the Sandwich Islands, as the place of its locality.

If they can show to your satisfaction that this Government owes them the *value* of any thing, on account of any illegal or wrong act or acts of this Government, the *amount thus owing, is property*, in the eye of the law, which Ladd & Co. have a right to possess and own, and which they did possess by implication, and own on the 13th of July 1846, and which you are bound by your oaths to say this "Government ought to pay the said firm of Ladd & Co."

And further, if Ladd & Co. can show any value to "contract of every description," or that they are entitled to indemnity of said Government, for any losses or damages they may have sustained in consequence of any illegal acts done, or wrongs committed by the said Hawaiian Government; then you are to take these things into consideration, in determining "how much ought the Hawaiian Government to pay said firm of Ladd & Co." &c.

Ladd & Co. could not demand of the Government, the price of any specific property, in the shape of real estate or goods in

sion because that would have been perfectly nonsensical and absurd. The controversy between the parties, it was well known, was not as to the price of any particular property *owned and possessed* by Ladd & Co. on the 13th of July, 1846, which the Government were desirous of purchasing, and the value of which you were called upon to determine. No; without an examination of the compact, as to the intention of the parties, the public history of the difficulties which have existed for the last two years between the parties, the public acts and declarations of the agents of this Government, clearly demonstrate that this was not the question you were called in to determine.

The whole world, (of the Sandwich Islands at least) knew, that this Government, under color of legal proceedings, had seized, sold and purchased, about two years since, every thing in the shape of real and personal property possessed by Ladd & Co. This fact, together with the assertion that Ladd & Co. had failed—that all their property had been sold on execution, in favor of the Government—that they were unable to pay their debts, and various other statements of like imports, had been trumpeted from time to time to the public through the Government newspaper. The Attorney General had, time and again, publicly asserted these things as facts, had talked freely with me upon the subject in our negotiations, in reference to the compact, and had even gone so far, upon a certain occasion before Judge Andrews' court in this place, (the proceedings of which court were published and circulated in pamphlet form) as to assert that Ladd & Co. had not only no property, but that even their character and reputation were entirely worthless. The Attorney General himself was the attorney and agent of the Government, in all the proceedings under color of which Ladd & Co. were deprived of their properties and privileges in possession. He knew, and so did I, and so did every person in connexion with this Government, that Ladd & Co., when they entered into this compact or submission, had no property in possession.

How perfectly absurd then the argument of the Attorney General, that the object of this submission was to ascertain the value of property owned and actually possessed by Ladd & Co. on the 13th of July, 1846; that it was simply a contract of sale, and that you were called in merely to determine the price to be paid by Government for the property in Ladd & Co.'s actual possession. Such a construction would be most unreasonable, unmeaning, not agreeable to the nature of the compact, inoperative, manifestly repugnant to the real intention of the parties, absurd and farcical.

No; the Attorney General well knows, that such a construction as he would put upon the compact, was never thought of by the contracting parties at the time they executed it. It was an after

thought of Mr. Ricord's, unworthy his ~~agent~~ and the office he holds; a lame attempt to evade an honest investigation into the *real merits* of the controversies existing between the parties; an impotent effort to disregard the real intention of the contracting parties, and to acquire a reputation as a *shrewd lawyer*.

The truth is, the only thing in controversy between the parties, as every one on these islands knows, was whether this Government by any act of theirs, had illegally or wrongfully deprived Ladd & Co. of properties and privileges they had possessed prior to the execution of the compact; in other words, and within the purview and true meaning of the compact, whether Ladd & Co. had any legal or equitable demands against this Government, and if so, the amount or value of those demands. You, gentlemen arbitrators, were called in to ascertain the validity of those demands, and if valid, to determine "how much the Hawaiian Government ought to pay Ladd & Co." for them.

Is not this clearly the intention of the parties as evidenced from the whole scope and tenor of the compact, as well as the public history of the difficulties between the parties? Would not any other construction make the whole thing a perfect absurdity?

I now proceed to an examination of the rules, which govern in the construction of contracts, as established by elementary works, and by decisions of eminent jurists in other countries. These articles of submission, or this compact, is a contract, and I shall show you before I close, that it is one of the most solemn and binding that can by possibility exist between the parties, and that he who would wantonly sport with it or violate the good faith and honest intention with which it was entered into, would in any civilized country do an injury to his reputation as an honorable man, which it would take many years to retrieve.

For my own part, I cannot conceive how it is possible for any unprejudiced person of common sense or common honesty, to mistake the object and intention of the parties to this compact, by a candid perusal of the document itself.

Let any disinterested or unprejudiced person who has read this compact or heard it read, be asked what he understands it to mean, and I cannot doubt he would say, "I understand from it, that Ladd & Co. have demands of one kind and another against this Government—that the Government are unwilling to allow, or they deny them—that both parties, anxious for an amicable adjustment, have selected you, gentlemen, as arbitrators to examine into the validity of all these demands, and, if you find any thing valid in them, if you think the Government have in any way wronged Ladd & Co., or that in law or equity they owe Ladd & Co. anything, you will determine the amount, and say the Government ought to pay them that amount."

Is not this the common-sense view of the whole compact, and was

not this evidently the honest intention of the parties when they entered into the contract?

If then you can gather from the whole instrument, the *reasonable and probable intention* of the parties, you are bound to put such a construction to it, as will effectuate—carry out that intention.

The general rule adopted in the courts of law and equity in the United States, in the construction of agreements, is, that they shall be construed according to the plain, ordinary and popular, or common-sense meaning of the terms used in them—that they should be construed *liberally* and agreeable to the *real intention* of the parties, and in such a way as will not render the agreement *wholly inoperative*, or *defeat the object* had in view by the parties—*vide* Comyn, on Contracts, page 23, 4, 5, 7. Tierman, *et. al, v. Jackson*, 5 Peters U. S. S. C. Rep., p. 580—Hobson *v. McCarther*, 16 Peters U. S. S. C. Rep., p. 182.

But I contend this compact is to be regarded in quite a different light from ordinary contracts or agreements between private parties, and is to be held a much more solemn and sacred instrument. It is, in fact, nothing more or less than a *treaty*, made so by the law of nations, and so recognized by the Hawaiian Statutes. It is subject to the same rules, as to its character and its construction, as public treaties.

It is a treaty between the sovereign power of this nation and American citizens, and is just as sacred, as inviolable and binding upon that sovereign power, as if made with the Government of the United States, instead of its subjects. An obligation of the most solemn character has been imposed upon the whole Hawaiian nation, and he who would violate it in “one jot or tittle;” who would openly sport with it; who would trample it under foot, or who would in any manner defeat its honest purpose, would violate his sovereign’s plighted faith to the whole world, and would violate the universal law of nations—*vide* Vattel, chap. 15, sections 219, 20, 21, 22, and 231, 2. Yet this solemn compact—this sacred treaty, is apparently of no more consequence in the opinion of the Attorney General—is treated with as much indifference, and is regarded by him, as of a character no more sacred, than if it were a contract between private parties for the purchase and sale of a dog.

I insist that the Attorney General ought, at least, to assume a dignified demeanor in the examination of this compact; that he ought to examine it in the light which its sacred character bears. He appears here representing the sovereign of his nation, and ought to set such an example in upholding the sacred obligations of his liege lord, as would lead his subjects and all others, to regard them as something more than mere words and forms.

If the Attorney General would defeat and render absurd and inoperative, this sacred treaty, by a technical objection, based upon an

idle form, he must be prepared to acknowledge, either that his sovereign had been cruelly sporting with the feelings and interests of Ladd & Co., or that he intended by duplicity and cunning, to overreach them; either of which, the Attorney General must admit, would be dishonest and grossly unjust.

Happily, however, for the character and reputation of the sovereign, the Attorney General has assumed the whole responsibility of the objection, under consideration, by which he hopes to deprive Ladd & Co. of their right to prosecute to a speedy determination before you, their just demands against this Government. He says his reputation as a lawyer, requires him to take this exception; that should this case reach the umpire in New York, Chief Justice Bronson, he, the Chief Justice, would look upon him, Mr. Ricord, as a dunce, for neglecting to take this exception, and would exclaim, "why, this a pretty Attorney General, to lose his whole game by throwing up the best trump in his hand."

Now, I can assure the Attorney General that he has entirely mistaken the character of the Chief Justice of New York, and has formed entirely erroneous ideas of that which will be necessary to give him an honorable reputation, as a lawyer, in the opinion of that distinguished jurist, or of any other respectable lawyer in the State of New York. And I can further assure the Attorney General, that in a grave matter like the present, where the sovereign of a nation is a party, and his Attorney General is his advocate, an objection to the honest observance of a sacred treaty, of the character now under discussion, will not enhance his reputation as a lawyer, among dignified and enlightened jurists in any civilized country. And here I must be permitted to add, that in a private contract between individuals, about some trifling matter brought before a petty justice's court, I should have anticipated, perhaps, such an objection; but I certainly did not look for it here; from the Attorney General of a nation to an instrument of this sacred nature, ratified and approved by the King himself.

I must confess, I did not anticipate in all my negotiations in this matter, that there was any wish, or that there would be any attempt to avoid a thorough investigation into all Ladd & Co.'s demands and claims against the Government, but quite the contrary. I was, therefore not very *wary* in my negotiations.

I interested myself to effect the formation of the treaty, as the friend of both parties, supposing and understanding at the time, that both were desirous to have an amicable adjustment of the difficulties which had so long existed between them, and which had more or less divided and distracted this whole community, for the last two years. I had no sinister design and no mental reserve, in this negotiation, and I am still unwilling to believe the Attorney General had any.

This much I will say to the Attorney General, before concluding, that the Machiavelian principles and policy, in reference to treaties,

has become obsolete, that now, nations, as well as individuals, in their intercourse with each other, have arrived at the wise conclusion, to adopt the principle, "honesty is the best policy;" and that if this nation looks forward to success and prosperity, or hopes to maintain its independence and power, or if the Attorney General and his official associates, expect to acquire an honorable name and fame, by adopting any other principle of public action, or by meting out to all foreign residents upon these Islands, aught but equal and exact justice, both to it and they, will find themselves most sorrowfully mistaken.

But I now turn to the rules of law, established for the interpretation of treaties. Let us see how far they are applicable to this compact or treaty. Vattel, in chap. 14, of his law of nations, sec. 214, says: "The conventions and contracts which the sovereign, in his sovereign character, and in the name of the State, forms with private individuals of a foreign nation, fall under the rules we have laid down with respect to public treaties."

Let us examine the rules thus laid down by Vattel. In chap. 17, "of the interpretation of treaties," sec. 269, he says: "The faith of treaties is no less violated by a refusal to admit an evidently fair interpretation, than by an open infraction." "It is the same injustice, the same want of good faith; nor is its turpitude rendered less odious, by being cloaked up in the subtilties of fraud." Same chap., sec. 270: "Since the sole object of the lawful interpretation of a deed, ought to be the discovery of the thoughts of the author or authors of that deed; *whenever we meet with any obscurity in it, we are to consider what probably were the ideas of those who drew up the deed, and to interpret it accordingly.*" "This is the general rule for all interpretations."

"It particularly serves to ascertain the meaning of particular expressions whose signification is not sufficiently determinate." "Pursuant to this rule, we should take those expressions in their utmost latitude, when it seems probable that the person speaking had in contemplation everything which, in that extensive sense, they are capable of designating."

"By the same rule, we are to interpret a clause in the utmost latitude that the strict and appropriate meaning of the words will admit, if it appears that the author had in view anything which that strict and appropriate meaning comprehends." Sec. 273.—"*It is a gross quibble to affix a particular sense to a word, in order to elude the true sense of the entire expression.*" Sec. 274.—"*When we evidently see what is the sense that agrees with the intention of the contracting parties, it is not allowable to wrest their words to a contrary meaning.*" Sec. 275.—"Is it necessary in an enlightened age, to say, that *mental reservations* cannot be admitted in  
"There is scarcely an individual now to be found, v

be ashamed to build upon a mental reservation." "What can be the use of such an artifice, unless to lull the opposite party into a false security, under the vain appearance of a contract?" "It is then a real piece of knavery." Sec. 280.—"We ought always to affix such meaning to the expressions as is most suitable to the subject or matter in question." Sec. 282.—"*Every interpretation that leads to an absurdity, ought to be rejected*; or, in other words, we should not give to any piece a meaning from which an absurd consequence would follow, but must interpret it in such a manner as to avoid absurdity." "As it is not to be supposed that any one means what is absurd, it cannot be supposed that the person speaking intended that his words should be understood in a manner from which an absurdity would follow." "Neither is it allowable to presume that he meant to indulge a sportive levity in a serious deed; for what is shameful and unlawful is not to be presumed." Sec. 283.—"It is not to be presumed that sensible persons, in treating together, or transacting any other serious business, meant that the result of their proceeding should prove a mere nullity." "The interpretation therefore, which should render a treaty null and inefficient cannot be admitted." "We may consider this rule as a branch of the preceding; for, it is a kind of absurdity to suppose, that the very terms of a deed should reduce it to mean nothing." "*It ought to be interpreted in such a manner as that it may have its effect, and not prove vain and nugatory.*" "The question is to give the words that sense which ought to be presumed most conformable to the intention of the parties speaking." Sec. 285.—"*We must consider the whole discourse together, in order perfectly to conceive the sense of it, and to give to each expression not so much the signification which it may individually admit of, as that which it ought to have from the context and spirit of the discourse.*" Sec. 287.—"*The reason of the law, or of the treaty, that is to say, of the motive which led to the making of it, and the object in contemplation at the time, is the most certain clue to lead us to the discovery of its true meaning.*" "*When once we certainly know the reason which has determined the will of the person speaking, we ought to interpret and apply his words in a manner suitable to that reason alone.*" "If the piece is in itself obscure—if, in order to discover its meaning we have no other resource than the investigation of the author's views, or the motives of the deed, we may then have recourse to conjecture, and, in default of absolute certainty, adopt as the true meaning, that which has the greatest degree of probability on its side."

Sec. 290. "It is commonly said, that *we ought to adhere rather to the spirit than to the letter* of a law or promise. The true reason of a promise is that which the contract, the nature of the things in question and other circumstances sufficiently indicate: it would be useless and ridiculous to alledge any by-views which the person might secretly have entertained in his own mind."



Sec. 291. "The rule just laid down serves also to defeat the pretexts and pitiful evasions of those who endeavor to elude laws or treaties." "*Good faith adheres to the intention: fraud insists on the terms, when it thinks they can furnish a cloak for its prevarications.*"

I have endeavored to show the applicability of these rules to the question and the treaty under consideration, as I have passed along.

Apply them, gentlemen, as you must and will in your examination, and what becomes of this *weighty* objection of the Attorney General of the Hawaiian Government, urged as it has been with so much gravity and boastful confidence? why it vanishes like "the baseless fabric of a vision," leaving not even a shadow behind.

I have not the time or the disposition, nor do I conceive it at all necessary to follow and comment upon the arguments of the Attorney General in support of his objection. I listened attentively while he was reading his argument, and so far as my recollection serves me, the legal positions advanced by him, so far as they have any applicability to the question under consideration, make most strongly in favor of the grounds I have attempted to maintain.

I will, however, cite one or two examples. In arriving at the understanding "apparent upon the face of the contract," the Attorney General to prove what this was, says, "I propose to consider, 1st, the *motives of the compact.*" "These are recited in the preamble. All preambles have this intention: they recite the state of things calling for what follows."

Now, what says the preamble? Simply and plainly, that Ladd & Co. "claim to have *demands* against the Hawaiian Government." Nothing is said of the nature, quality or amount of these demands. There is no restriction placed upon them; they are not *specific* demands, but demands *generally*; in other words, they are any rights, or any monies, which Ladd & Co. have a right, or a supposed right, to ask for, or require from this Government; "demands" or rights "of whatever name or kind soever," "which demands," says the preamble, "said Government deny, and which the respective parties to this agreement are mutually desirous to ascertain, liquidate and settle, upon legal and equitable principles."

Taking then this preamble as the guide to "*the motives of the compact,*" what becomes of the argument of the Attorney General, which insists that Ladd & Co. as well as the arbitrators, must *confine* themselves to an examination of the value of certain real and personal property owned and possessed by Ladd & Co. on the 13th of July, 1846, *proposed* to be bartered away to the King and Government?"

Again, he quotes authorities to show, that "contracts are *fi* primarily to be fulfilled according to the letter, if *reduced* because that is presumed to contain all that the parties when they made it."

So I contended, successfully too, when the Attorney General urged, in direct opposition to his own quoted law, the introduction of all the minutes, notes and papers, drawn up in the progress of our negotiation of the compact, to explain the compact.

Notwithstanding the Attorney General quoted this law, and notwithstanding the arbitrators have adopted it as their guide, and decided that the letters, &c., offered by Mr. Ricord, should not be read to explain the compact, he still, in his arguments, foists in a statement, of what he alledged to be the facts, connected with that negotiation.

Did the Attorney General conceive this course, also, necessary to his reputation as a lawyer?

The Attorney General has quoted numerous books and cases in this argument. As a matter of courtesy to him, I should feel bound to comment upon them, if it were possible to get at the text; but with the exception of the reports of the Supreme Court of the United States in my own library, many of the authorities cited by him, are not to be found upon these Islands. He will, therefore, excuse me if I make no further allusion to them.

And now, gentlemen arbitrators, I leave the question with you, not permitting myself to doubt for a moment, but that you will so decide it, as to carry out the evident object and honest purpose of the parties to the compact, that you will proceed at once to an impartial examination of the validity of Ladd & Co.'s demands against this Government, to the real merits of the controversies between the parties, and that you make such an award as justice and equity requires at your hands.

Mr. Ten Eyck having finished his argument the Board adjourned to Tuesday, August 25th.

### THIRD DAY.

Mr. Ricord rose in reply to Mr. Ten Eyck:—

Mr. Ten Eyck has endeavored to discover the object of entering into the contract of arbitration, by a comparison of the words of the compact, 13th July, 1846, in order to defeat the position assumed by me, that Ladd & Co., in not bringing forward some claim to the ownership of some specific property, either tangible or intangible, have fatally departed from that contract. I had offered, however, to produce the minutes of the negotiation between us, in evidence of that object; but this proffer has been objected to by Mr. Ten Eyck, and so far sustained by the arbitrators, as to preclude me from proving to you the *strictly legal intention* of the parties. What objection Ladd & Co. can have to the positive proof of such, our object or intention, is a mystery to me. They, themselves, rely upon the previous intention, in proof of what they alledge, viz: *that a technically legal and equitable submission was not intended.*

I held in my hand yesterday when opening this debate, all the letters and papers, proposed clauses and amended clauses of the compact, mostly in Mr. Ten Eyck's own hand writing, which were interchanged between us, the negotiators of that compact, and which would have clearly proved to you, that the King and Government did not desire this settlement to be conducted in that loose and one-sided way of equity, which has been here assumed by the other party; but on the contrary, that the King and Government preferred rather to leave Ladd & Co. to their remedy at law. I *except* therefore, to the decision, by which the real intention of the parties to this compact is kept out of view, when it is so capable of proof from documents, and while the party objecting to such proof, still borrows a defence from such intentions. Blackstone, vol. 3, p. 368, observes, "It is a general rule that runs through all the doctrine of trials, that the best evidence the nature of the case will admit of, shall always be required;" and adds, "if it be found that there is any better evidence existing than is produced, the very non-producing of it, is a presumption that it would have detected some falsehood, that at present is concealed."

Ladd & Co. are bound to adhere to the intention, of which we hold in our hands evidence irrefragible, proving that the parties to the compact, 13th July, 1846, were most precise; that Ladd & Co., through their negotiator, Mr. Ten Eyck, rejected a proffered question of damages proposed to them, and that instead of such a question, they deliberately took, and themselves embodied in the compact, a question of valuation of property. That they agreed to merge in that question of property, "*all unsettled book accounts—all unliquidated and unascertained claims; and all specialty contracts, specialty agreements, and all demands founded upon specialty, existing between the parties, (other than mortgage contracts) and all parole agreements and contracts, (other than promissory notes.)*" These under the name of "*demands against the Hawaiian Government, which said Government deny,*" had in the preamble been previously agreed to be submitted to the named arbitrators, "*in the manner hereinafter mentioned.*" They now, however, contend for an interpretation of that compact, in a manner so far fetched, as will excuse them for not having within the stipulated time, filed such a claim, tendering such an issue, as will enable these arbitrators, to decide that question of valuation of property. They cry bad faith and ill-liberality, on the part of the King and Government, for not passing by so fatal an objection. Yet, notwithstanding, they still go in quest of the means of interpretation.

They have laid much stress upon the *sacred* nature of the compact. We admit its sacredness; but it is sacred on both sides. The first action under it, so far as concerns the filing of the claims, was to be performed by Ladd & Co. They were to file their claims un-

der it within ten days, and to serve us with a copy. Those claims were however, to be *within the compact*, in such conformity to it, as would not disqualify the arbitrators from sitting in judgment upon them; and we find that the only question upon which the arbitrators can sit in judgment and make a binding award, is the question of property valuation on the 13th of July, 1846, submitted to them by mutual contract of the parties.

There is no technicality in the ground assumed by the King and Government. The other party in applying the word "*technical*" to any objection urged against the variance between the articles of compact and the claims as filed by Ladd & Co. have misconceived *in toto*. the meaning of *technicality*. To play upon words would be technical; or to confine them to some art or profession, would be technical; but, to demand the fulfillment of a plain, implied or necessarily inferential covenant of a written contract, is not technical, but specific. The context is expressly allowed by law to be taken into view, in arriving at the rights of parties under an agreement. "*The intention of the parties should be gathered from all parts of the contract, considered in connection with each other. To select part and reject part, is to make a new and different contract between the parties.*"—Plowd., 140, 288.

It matters not between whom a contract was entered into, whether between common persons or monarchs, or monarchs and common persons; its execution, first according to the letter, and if that letter be uncertain or ambiguous, next, according to the spirit and intention, is equally obligatory. The same rules of interpretation and of obligation, apply to treaties, public or private, as to the contracts of private individuals. Chancellor Kent remarks, "the meaning of treaties is to be ascertained by the same rules of construction and course of reasoning which we apply to the interpretations of private contracts." One of the rules so applicable to private contracts, is, "*every man shall perform his promise in the sense in which he knew the other party understood him.*"—Oliver's Summary, page 38. Another of those rules is, that "where a contract is reduced to writing, whether sealed or unsealed, all previous conversations and understandings in relation to the subject of it, are considered at an end, except so far as they are expressed in the writing, which is presumed to contain all that the parties concluded upon in relation to the subject of it."—Vin. Abr. Contracts, 26.

That the compact, 13th of July, 1846, is a treaty contract, does not, according to Kent and Vattel, so elaborately quoted yesterday, exempt it from the strict application of these rules, for Vattel, book 2d, chap. 14th, sec. 213, says, "the promises, conventions, all the private contracts of the sovereign, are naturally subject to the same rules as those of private persons. If there arises any difficulty on this account, it is equally conformable to prudence, to the delicacy of

sentiment that ought to be particularly conspicuous in a sovereign, and to the love of justice, to cause them to be decided by the tribunals of the State; this is the practice of all States that are civilized and governed by laws." Neither does the fact that it is a treaty-contract, preclude the possibility of its being misunderstood, misconstrued, or even violated, for the same author, book 2d, chap. 17, sec. 2, p. 162, observes, "if the ideas of men were always distinct and perfectly determined, if, in order to make them known, they had only proper terms, and none but such expressions as were clear, precise, and susceptible of only one sense, there would never be any difficulty in discovering the meaning in the words by which they would express it; nothing more would be necessary than to understand the language." And in view of such contingency the learned author proceeds to lay down rules of construction, precisely analogous to those which obtain in private contracts when disagreements arise between private parties. Wheaton also, an American international writer of eminence, admits the fact that breaches of treaty compact are possible, nay of very likely occurrence; he describes the effect and consequence of such a breach, in his 2d vol., at page 294, sec. 7, thus, "The violation of any one article of the treaty, is a violation of the whole treaty; for all the articles are dependant on each other, and one is to be deemed a condition of the other. A violation of a single article abrogates the whole treaty, if the injured party elects so to consider it. This may, however, be prevented by an express stipulation, that if one article be broken, the others shall nevertheless continue in full force. If the treaty is violated by one of the contracting parties, either by proceedings incompatible with its general spirit, or by a specific breach of one of its articles, it becomes not absolutely void, but voidable at the election of the injured party. If he prefers not to come to a rupture, the treaty remains valid and obligatory. He may waive or remit the infraction committed, or he may demand a just satisfaction."

That the King and Government have elected to take advantage of the breach of the compact, 13th of July, 1846, by reason of proceedings on the part of Ladd & Co., "incompatible with its general spirit," is not matter for reproach against the King and Government, who have not violated their stipulations under that compact, in one  *iota*, either of time, form, manner or matter, as was yesterday provable from the documents. They but take legal advantage of the violation by the other party.

It has been contended against us, that our objection, if good, is fatal to Ladd & Co. This we admit, but we cannot prevent the consequences of an act which was not ours but theirs. The fatal consequences of their act, is the last of all reasons, why arbitrators should seek out some far fetched method of allowing Ladd & Co. to take advantage from the contract, for in so doing, we are mad

the privilege accorded to us within our ten days, of crossing their specific demands. This would be doing them *equity* with a vengeance and us *inequity*; which would destroy the very idea of equity, or in common parlance, *fair play*.

I have already contended before you, that by the words of the compact, grammatically and philologically construed, or construed by the ordinary reader in a common sense way, and I again contend *i. e.*

1st. That the preamble recites the fact *generally*, of an assertion of demands against the Government, by Ladd & Co., in their character of merchants; and that the King and Government utterly deny those demands, in a *general manner*, without enumerating them.

2d. It recites the fact; that the parties are mutually desirous, those affirmed and denied demands should be *settled*.

3d. It next recites that the parties are so mutually desirous to have those demands "*settled upon principles of law and of equity*;" which words I have been prepared to prove were interlined in the draft, out of which they had been omitted.

4th. It recites that in view of this legal and equitable settlement of unnamed, asserted and denied demands, the parties agree, to submit "*to the final award, order, arbitrament, determination and judgment under oath, of Stephen H. Williams and James F. B. Marshall*" and the umpire.

5th. That for certainty, and lest the submission should be construed as a general and unqualified submission, without reservation or restriction as to the matters to be taken into consideration under the question, it next distinctly *enumerates the demands* intended to be merged in that question, and the *exceptions made to those demands*; which exceptions constitute the submission a *partial* or *special* submission, restricting the field of judicial inquiry into certain limits, and *excluding* certain things, which are agreed not to be taken into consideration.

6th. That the parties so agree to *submit* to legal and equitable settlement the asserted and denied demands, upon a *certain quoted form of question*, into which, for the manifest benefit of the parties, and as the declared "*measure of the duties and powers of the said arbitrators*," those arbitrators are to find an award, as that question itself imports, viz :

**"How much ought the Hawaiian Government to pay said firm of Ladd & Co. for all their property, of whatsoever name and kind, tangible and intangible, including contracts of every description, taking into consideration, whether they the said firm of Ladd & Co. are entitled to indemnity of said Government for any losses or damages they may have sustained in consequence of any illegal acts done or wrongs committed by the said Hawaiian Government."**

To this question inclusive, extends the submission, and no further. What follows is the covenant which the parties make with each other

inclusive. No construction can sensibly be applied, which make the stipulations auxiliary to the award, other than direct pointing out to the arbitrators how every agreement tends to action without again alluding to it in direct words. Yet the having agreed to the question, and covenanted to abide upon it, proceed to make provision for its being carried out. It is again find them recurring to their covenant to abide such by reciting that "*to this end:*" To what end? To the end award either by the arbitrators or by the umpire upon the day, they agree "*to file with said arbitrators a detailed statement of grounds, reasons and items of their claims against said King and Government, within ten days from the day said arbitrators shall be sworn, and at the same time to furnish a copy thereof to the Attorney General, and to appear and produce their proofs and arguments in substantiation thereof on the days assigned for hearing said arbitrators.*" What claims can Ladd & Co. in contemplation of the foregoing agreement to settle legally and equitably, have against the said King and Government? They had just enumerated and merged all their disclaims into a question of property valuation. What claims then have they in the third paragraph after that question have to assert, other than the value of property. To assert any other, would be a violation of that, an award on which, they had solemnly covenanted to perform, fulfil and keep. They were not at liberty to foist another question before the arbitrators. No other issue could be brought but on the value of property, and to join one of damages is a violation on their part of the compact, at once contrary to its plain intent and to their covenant of compliance, injurious to the party against, and rendering the duty of the arbitrators, who are to take the compact as their rule of action, impossible.

Mr. Ten Eyck has attempted on the part of Ladd & Co., to

standing of the covenanted duty of Ladd & Co. towards us, in filing of their claims in ten days, to which we are to make answer ten more. The filing of their demands is to precede ours, and in order that we may "*file our points of controversy, offset and defence to such claim as may have been set up by the said Ladd & Co.*" not to claims not set up by them, for that would destroy the idea of a controversy or issue between the parties, to be tried by arbitrators under the question; to which issue, first Ladd & Co. consent, "*to appear and produce their proofs and arguments in substantiation thereof on the days assigned for hearing by said arbitrators,*" and to which secondly, "*the said King and Governor agree to appear in like manner, and having filed points of controversy, offset and defence, to such claims as may have been set up by the firm of Ladd & Co., adduce evidence and arguments controverting any and all such claims.*"

It is thus mutually agreed that we are to traverse their claims, that the evidence and arguments of the parties are to be confined to the adverse demands and denials, and no other; and that the arbitrators, already confined to an award upon a given question submitted, are to decide it in accordance with the issue so joined by the compact after hearing the evidence and arguments upon that issue: the compact precluding them from the rejection of evidence "*for any legal cause,*" and obliging them to "*hear all the legal evidence offered by either party before awarding*" upon that issue. There can be nothing clearer. By the forced construction of the difference between the claims filed and the award to be made, the issue and question, which are plainly intended to be in unison, are at variance. We would not and could not have filed our "*points of controversy, offset and defence to such claims as may have been set up by the Ladd & Co.,*" nor would we have any issue to direct our proofs and arguments to, were such a variance admissible. The proofs would necessarily be directed to some other inquiry besides the claim filed, if the arbitrators were left to find out Ladd & Co.'s property for themselves, in order to award upon its value; and this would be an unlawful direction of the testimony, according to the compact, which the arbitrators have no power by the compact to make. Besides, it presupposes that the arbitrators are to conduct the examination and cross-examination of the witnesses; whereas by the compact it is the parties who are to *adduce their proofs*, examine and cross-examine their witnesses, and make their arguments in person or by counsel; and they (the parties) are expressly confined in such defence and arguments to the claims and controversies as they have filed them, within the respective days accorded to each.

If the arbitrators are to find out Ladd & Co.'s property, which we have agreed to purchase, are they also to find out the title to that property? or, are they to guarantee the title of that property. w



no evidence or arguments are to be adduced, except in very the claims and controversy or issue made by the parties is ess agreement of the compact, and it is also the universal rule law and of equity. Sterkey says, vol. 1, p. 430, "In the e, with respect to the nature of the evidence; as the busi- rial is to ascertain the truth of the allegation put in issue, nce is admissible which does not tend to prove or disprove joined." And Peake, another undisputed and distinguish- r, says on the same subject, page 6, "The evidence must ed to the particular fact in dispute, and therefore no evidence ing to the issue, or in some manner connected with that issue ceived." In what way does the present issue tendered to add & Co. within their ten days, admit of the relevant intro- of such testimony as will enable the arbitrators to award upon location or value of any property owned by Ladd & Co. 3th of July, 1846? To admit such evidence, if the issue warrant it, will be contrary to the rules both of law and of pon which they have undertaken to decide claims expressly in a question for their consideration. They are sworn to *all legal evidence offered by either party*," and they are by reasoning "*to reject evidence for legal cause*." We have under the compact, of objecting to evidence for legal cause, eing done, the arbitrators are forthwith to reject it in "*ascer- liquidating and settling*" the affirmance and denial of the "*upon legal and equitable principles*," pursuant to the pre- We do of course object to any evidence offered out of the hich is one of damages. How then can the arbitrators, even ally, arrive at the property of Ladd & Co., or at its value? compact is a regular contract of sale between the parties. It

of that property, so that we may object to it and so that the arbitrators may augment that price according to agreement.

Mr. Ten Eyck has urged that Ladd & Co. are not restricted as to property; this is true, but they are bound to restrict themselves and have impliedly agreed to restrict themselves in filing their claims. Mr. Ten Eyck has also urged, that the damages Ladd & Co. claim, are property; but to the contrary of this, we have the learned authority of Sir William Blackstone, who, vol. 2. page 435, says, "the plaintiff has no certain demand in damages until after verdict or award; but when the plaintiff's damages have been assessed and judgment is given there upon, whether they amount to 20 pounds or 20 shillings, he instantly acquires, and the defendant loses at the same time, his right to that specific sum;" after which the learned author remarks, "we may fairly enough rank such damages or satisfaction assessed, under the head of property acquired by suit and judgment at law." Even the damages they count upon, cannot therefore, legally be reckoned as their property in contemplation of the compact.

Yet, the learned Counsel has asked in the way of ridicule, whether it could be possible Ladd & Co. would have contracted with us in view of property on the 13th of July, 1846, when it was well known they possessed none? If it be the fact they had none, as he surmises, more is the pity; for they were long enough in contracting the compact, and did it by the aid of learned Counsel who chose the question of property for submission, instead of another embodied by me in the first draft of the compact, and presented to them in the following words:

*"Are damages due from the Hawaiian Government to the house of Ladd & Co., or either of the members of that house, on account of any transactions in which that house or either of its members have been engaged for said Government, which said Government or either of its officers have obstructed or failed to fulfill? if so, how much?"*

I have already offered to exhibit and prove to you the original proffered draft of the compact embodying that question, but have been prevented; though that and much other matter of the like kind, while not admissible in explanation of the compact, is good evidence to rebut Ladd & Co.'s pretence, that damages and property, as questions, were not both distinctly mooted and sufficiently understood to put them on their guard as to the necessity of drawing a proper distinction between those species of claims. They should have thought of the fact that they owned no property, before contracting to make the question of their losses or damages hinge upon the value to be placed upon their property. It was not for me or for my principals the King and Government, to think for them, especially when so well supplied with legal counsel. They should have foreseen that scrupulous fulfillment would be required on their part, of a compact with a Government whose express enacted laws enforce the doctrine of

specific performance. The preamble to chapter 22d page, 113, of the Hawaiian laws, passed 18th of May, 1841, recites, "*It is of vast importance to men engaged in trade, that each party fulfill the agreement. If either fail, trade is embarrassed, and the public is injured.*" The decision also of the Supreme Court of that Government, at the June term, 1845, in case of Greenway's estate *v.* Charlton & Skinner, is pointedly to the same effect: when they say, "*by turning to the 15th chapter, section 1; 16th chapter, sections 1 and 2; 18th chapter, section 3; 20th chapter, sections 1, 2 and 3; and the preamble of 22d chapter; also chapter 23, sections 1, 2, 3 and 4, it will be perceived that instead of one direct statute that contracts shall be fulfilled, there are a great number of statutes, all of which refer to it as a distinct fundamental principle that they shall be executed.*"

Every man is bound to know and to take notice of the law of the land in which he lives or contracts. The *lex loci contractus* is an implied condition of every contract. Mr. Justice Story, in his *Conflict of Law*, observes, page 75: "*Parties may well be presumed to contract with reference to the laws of the place where the contract is made and is to be executed. Such a rule has certainly and simplicity in its application.*" One of the evident intentions of each party to this compact was, or it should have been, to fulfill his contract, whatever that contract called for. Ladd & Co.'s demands were enumerated in it, and were of a specific kind. Their property to be purchased was neither limited in location, extent or value, but only in generic description, as "*tangible and intangible including contracts;*" and of this description they were at liberty to imagine as much as they pleased, only giving it a locality and value for our guidance, and in order to serve the purposes of the arbitrators; but they were not at liberty to leave it so woefully intangible that imagination roams in vain to find it. This they have done; and this defeats as well the object had in view by the compact as their expectations.

The learned counsel ventures the idea that we have evaded the compact by taking advantage of a fatal variance of which Ladd & Co. have been guilty, in violation of its express words, spirit and intent. This is our right and prerogative both by the laws of the United States and Great Britain. Starkey, vol. 1, p. 477, says: "*Where a party is bound by the nature of the case, or by his own allegation, to strict proof of a written document, any variance which affects the same will be fatal.*"

"In the decree of specific performance of a contract," says Chancellor Kent, vol. 4, p. 451, "*the Court of Chancery will always have an eye to the substantial justice of the case. The agreement to be enforced must be clearly proved as charged in the bill, and the acts of part performance must unequivocally appear to relate to the identical contract set up.*"

"In an action on a written contract it may be read to the jury in evidence, to see if it substantially comport with the declaration." *Barnham v. Barnum*, 1 Tyler's Rep., p. 72.

"In a declaration for a libel, if the plaintiff declare *que sequitur in his verbis silect*, it would appear that the minutest variance between the libel offered in evidence, and the declaration, will be fatal." *Harris v. Lawrence*, 1 Tyler's Rep., p. 157.

"The slightest variance in the description of a record is fatal." *State v. Bradley*, 1 Haywood, p. 463.

"The declaration stating a contract with two persons, whereas it was only made with one, will be fatal." 1 Haywood, p. 463.

Cases of variance are numerous in the courts of Great Britain and the United States, and have in innumerable instances been taken advantage of. In fact, an attorney who should fail of his duty to his client in this respect, would be of no very great professional account. I should look upon it as a dereliction from duty, to pass unnoticed a valid objection so often sanctioned by the acts of my betters in the courts of wiser nations, as a material variance between the contract and the issue—a variance so flagrant in this case. Were the record to go up for final award to the umpire, Chief Justice of the Supreme Court of New York, to whose bar I have the honor of belonging, I should blush for my professional fidelity and acumen were he to discover that such a defence had escaped me; while the learned gentleman on the other side deems it a quibble to condescend to anything but the *bonâ fide* merits of the case. I regard this imputation of quibble as casting reproach upon the learned, the honorable and the upright, at the bars of Great Britain and the United States, where nothing of this sort is suffered to escape.

Yet I have been sneered at here for bringing what my learned antagonist denominates an objection of form or a quibble. It is not, however, an objection of form, but of substance and material, to the contract of submission, in consequence of which that contract is, to our benefit, impracticable; and is impracticable to the detriment of Ladd & Co. who were guilty of the non-compliance. Had they been under the necessity of complying with it in the way in which they have, and had such necessity carried with it a tendency to defeat the object of the compact, then I grant there would be *a power for good* in the court to allow a departure from the form requiring such a compliance; but when Ladd & Co. had the proper course clearly marked out, and nevertheless departed from it themselves, *they left us free*.

It has been my painful lot to be the submissive patient under not only a copious *ore tenus* perusal of Vattel, levelled at this advantage taken by me for my client the Government, as if bad faith was associated with us for taking advantage of the variance between a treaty contract to arbitrate, and the shocking departure of my adversary

om that contract in his mode of presentation under it. The learned gentleman would have you to believe that *good faith* belongs *solely* to the King, while he claims for Ladd & Co. a monopoly of *bad faith*. He claims for them the right to violate their engagements with us, and still to require us, *half diplomatically*, to take neither notice nor advantage of the circumstance; he would have us let the variance go or fear of being taunted *pettifoggers*! He contends that absurdity would follow the constructions urged by me, while, in fact, it is the only sensible, just, logical, legal and proper construction; the only construction that will effectuate the agreement of the parties as understood by them at the time in conversation, and as imported by the words, spirit and intent of the compact.

But that there should be no quibbling in the discussion of such a point as is now presented for your consideration, would be remarkable had it not occurred. Mr. Ten Eyck has presented you a trite specimen of this sort of thing, as he himself admitted, when, by way of illustrating what *technicality* was, he took ground upon the words of the compact, "*as hereinafter mentioned*;" alledging that these words were surplusage, and had no consequent bearing upon the claims of the parties; insinuating that when writing the compact I might have intended to have ~~THERE~~inafter mentioned some thing, which had been forgotten. Now, what effect the allusion to these words "*hereinafter mentioned*" may have had upon your minds, gentlemen, I know not; but to me they have a most significant bearing upon the very ground I have assumed in this question of variance. They enable me triumphantly to retort upon the learned counsel that he has *overreached* himself in alluding to them at all, a sin he was disposed yesterday to lay at my door.

Those words are in fact a key to the whole question of *modus* agreed upon in the compact which they precede. The nominative to the plural verb "*are agreed*" will be found to consist of "*unsettled book accounts, unliquidated and unascertained claims, specialty contracts, specialty agreements and demands,*" collectively assembled to be the nominative to "*are agreed*" in the last line; which line reads, "*are agreed to be merged in the following questions, viz.*"—These nominatives are followed by descriptive adjective sentences; they are described as "*so to be submitted*;" how to be submitted? why, as *foresaid*; that is, to Stephen H. Williams and James F. B. Marshall, upon legal and equitable principles: these nominatives being the general demands alluded to in the preamble, as claimed by Ladd & Co., and denied by said Government. After the preamble has *excited them generally*, this next paragraph in which the words "*as hereinafter mentioned*" occur, is properly speaking the clause of submission and in it, these nominatives are for greater precaution specially enumerated and defined as being those which the parties "*have therefore respectively agreed to submit as well as all claims to dam-*

ages arising under the same." The claims to damages are thus agreed to arise solely under the same," that is, under the demands agreed to in the preamble as claimed by Ladd & Co., and denied by the Government. If the claims of Ladd & Co. arise otherwise than under these demands, you have no jurisdiction over them. Such alone are the demands and damages "arising under the same," submitted, as you will perceive by studying the submission clause, "to the award of Stephen H. Williams on the part of said Government, and James F. B. Marshall on the part of said Brinsmade, Ladd & Hooper." These nominative claims are next carefully specified, named and closed, and exceptions are made to them by the episode clause, from which my learned friend has extracted for me the very peculiar words as "hereinafter mentioned," which he contends mean nothing. But, as you will doubtless already have perceived the bearing of what I have remarked, relative to the submission clause, the nominatives to "are agreed," and the adjective sentences upon the words "so to be submitted," you will with the like ease notice the bearing of the merger portion of the question, "taking into consideration whether the said Ladd & Co. are entitled to indemnity," &c., and the bearing of the still after covenant of the parties that "to this end" "they agree to file their claims, &c., upon the words (as hereinafter mentioned)," showing them to import "in the manner hereinafter mentioned."

Such is the hereinafter way or manner of their submission agreed upon by the parties. All matters alluding to the manner of forming the issue between the parties, both before and after the question, seem to have their confluence into the question. The manner of filing the claims of Ladd & Co., is agreed to be "hereinafter mentioned," and that manner is thereafter most expressly mentioned, separately by each party, and to it is devoted a paragraph for each party respectively. The enumerated claims "so to be submitted" as aforesaid, "and agreed to be submitted as hereinafter mentioned," are the claims demanded by Ladd & Co. and denied by the Government in the preamble; they are the "said demands" agreed by the submission paragraph, to be submitted to the named arbitrators, to be awarded upon, on legal and equitable principles; they are the special demands enumerated; they are the demands agreed to be merged in the question; they are the demands "agreed to be submitted (or filed in) as hereinafter mentioned;" and they are the same demands in the compact afterwards required to be filed and served in ten days by both parties. When however, they do come to be submitted, "as hereinafter mentioned," it will be noticed that they have passed through the coloring medium of the question, and that, chameleon-like, these nominatives have assumed its hue. They are to partake of a question of property and no longer of damages; they are to be merely "taken into consideration," in estimating the value of proper-

ty, which has become the general question, swallowing up or merging the other; and which we find *really* to have merged them, their consideration being recited from the centre to the end of that question, as a collateral of an augmentative nature; showing that it was the intention to lose sight of or obscure them by the property question to which the special attention of the arbitrators was agreed to be turned in their award. The gentleman has done vast injustice to the word "*submitted*," in the sentence "and agreed to be submitted as hereinafter mentioned." It means "agreed to be handed in," "agreed to be filed with the arbitrators;" "agreed that a copy thereof be served upon the said Attorney General as aforesaid." Such is the true, grammatical and philological meaning of "*submitted*," and such is also the true, grammatical and philological meaning of "*hereinafter mentioned*," in that sentence, so plain to me and so enigmatical to my honorable friend.\*

Gentlemen arbitrators, your time has already been largely consumed, upon a question not connected with the merits of the complaint but affecting the compact by which you exist, and most materially affecting the rights of the parties under that compact. The King and Government have but claimed their legal and equitable right under that violated compact to be released from the fulfillment of what the other party have forfeited by their own deliberate act assisted by learned counsel. Surely if the variance is, as I contend it to be, so fatal as to render an award upon the question submitted to you impossible, according to the law of evidence; then it may not be amiss to consider how far you will entail upon yourself the labyrinthine inquiries into which their misfiled claims will lead you? For my own part I am nothing loath to go into those inquiries, and expose the rottenness of Ladd & Co.'s claims upon this Government. In fact, I would request that this question of abatement might be delayed in its decision until the whole record of evidence and debates shall have terminated, in order that, the merits having been considered, the world may know the true history of Ladd & Co.'s claims; should

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\* Mr. Ten Eyck argued further, that the Attorney General had overreached himself in drawing up the compact, if he expected to confine the examination to the question of the value of property proposed to be sold, as contended by the Attorney General, to the King and Government of the Sandwich Islands. Mr. Ten Eyck contended by way of argument, and to show how easy it was to raise technical objections, that the second clause or paragraph of the compact was mere surplusage. By it, certain things "*as hereinafter mentioned*," were agreed to be merged in a certain question. Now it would appear by the reading of the compact, that there was no subsequent mention of anything contained in that paragraph. The Attorney General had either purposely omitted, or forgotten to mention them, and the compact being complete and proper without them, this paragraph might be regarded as though it was not in the compact. I do not propose to argue this point further, but simply to call the attention of the arbitrators to the point, if *terms* are to govern the construction of the compact instead of the *intention* of the parties.

you be of opinion that a plea in abatement can legally be deferred until after the merits have been decided.

After Mr. Ricord had concluded, Mr. Ten Eyck remarked that the Attorney General had again alluded in his argument to the drafts &c. of papers interchanged between the parties through them prior to the execution of the compact under discussion, as tending to show the real intention of the parties thereto. He, Mr. Ten Eyck, wished to say on behalf of Ladd & Co., and he would now for them make the Attorney General this distinct proposition, viz: to allow all the documents, letters and papers, which passed between Ladd & Co. and himself and the Attorney General, prior to the execution of the compact, and relating thereto, to be filed as evidence with the arbitrators, provided he, the Attorney General, would allow Mr. Ten Eyck to be sworn and examined as a witness of what he understood to be the real intention of the parties, in entering into the compact. The Attorney General declined this proffer.

The Board adjourned to Wednesday, Aug. 26th.

#### FOURTH DAY.

The Board met at 10 o'clock, and the following decision of the arbitrators upon the reasons urged firstly and secondly by Mr. Ricord, in abatement of the entire demands of Ladd & Co. was read :

The arbitrators chosen under the compact of July 13, 1846, having carefully and deliberately heard and examined the arguments and authorities given and made by the parties upon the reasons firstly and secondly urged by Mr. Ricord, Attorney General, in *abatement* of the entire demands of Ladd & Co., are of opinion that those reasons are not of sufficient force to release them (the arbitrators) from their obligations, under oath, "impartially, fully, and patiently to hear, consider and adjudicate the *matter in controversy* between the said parties, as presented to them within the purview and true meaning of this compact, allowing said parties full latitude of hearing and debate."

We, therefore, decide that Messrs. Ladd & Co. proceed to the proofs and reasons of their first item of claim.

S. H. WILLIAMS, } Arbitrators.  
J. F. B. MARSHALL, }

Honolulu, Aug. 26, 1846.

Mr. Ricord wished to take exceptions to the decision of the court. Mr. R. was asked why he wished to except, as there was to be no appeal from the final award of the arbitrators. Mr. R. replied that he expected that the decision of the arbitrators would not be enforced by Judge Andrews, as it was to be a rule of his court, if he could show cause why their decision should not be executed. An animated discussion then took place between Mr. Ricord and Ten Eyck on this point : Mr. Ten Eyck stating the decision was to be final and



without appeal, and that Judge Andrews had no other authority in the matter than to aid the arbitrators by summoning witnesses, &c.

Board adjourned for want of a stenographer to Thursday, Aug. 27.

#### FIFTH DAY.

Mr. Page, appointed by the Board as stenographer *pro tem*. Witnesses sent to Judge Andrews to be sworn. Mr. Page also sworn.

The following is the form of oath administered to witnesses :

#### *Form of Oath.*

You solemnly swear, in the presence of Almighty God, to answer all such questions as may be put to you by the parties in the case now pending, between the King and Government of the Hawaiian Islands, and Peter A. Brinsmade, William Ladd, and William Hooper ; and to speak the truth, the whole truth, and nothing but the truth. So help you God.

Mr. M. Page was sworn as stenographer, and Messrs. Gray and Stidolph as clerks.

The Board having notified Mr. Brinsmade that they were ready to proceed to the examination of witnesses, that gentleman rose and said :—

“ It affords me no small degree of satisfaction to know that at last Ladd & Co. have a chance for an impartial hearing, though I ought not to say *chance* while I see you, gentlemen, occupying those seats. My claims are chiefly based upon contracts to which the Hawaiian Government are a party, and the testimony by which they will be supported will be chiefly confined to illustrate the history of the acquisitions of my house, which are embraced in the conveyance made in the “ Belgian Contract,” and of the acts by which those contracts have been invaded, and the properties covered by them wrested from us. The testimony of Mr. Richards will show you the fact and solemnity of the contracts I hold, and which I regard as still in binding force and obligation.”

Mr. William Richards was then called to the stand and examined by Mr. Brinsmade.

Mr. B. Where were you on the 17th May, 1843 ?

A. In Brussels.

Mr. B. Were you then in the employ of the Hawaiian Government ?

A. I was not then *directly* in the employ of Government. I was then on my way from London to Paris.

Mr. B. Were you in a notary's office there ?

A. I was.

Mr. B. Do you recollect the name of the notary ?

A. I do not.

Mr. B. For what purpose were you there ?

A. For the purpose of signing certain documents.

Mr. B. What documents were they ?

A. A document which I should designate as the Belgian Contract or Colonization Compact, between the Hawaiian Government on the one part, the Belgian Company of Colonization of the third part, and Messrs. Ladd & Co. of the second part.

Mr. B. For whom were you acting ?

A. I was acting for the King and Government of Hawaiian Islands, so far as we could act.

Mr. B. Had you authority to do so ?

A. I had a general commission, signed by the King and Premier, and a power of attorney, signed in the same manner.

Mr. B. Did you leave that power of attorney in the hands of the notary ?

A. I did: I left a duplicate original.

Mr. B. Why did you leave it in his office ?

A. Because I was informed that the power of attorney, or any other document would not be of service or valid according to the laws of Belgium, unless left in the hands of the notary.

Mr. B. Did you sign that instrument by virtue of that power of attorney ?

A. I did. I signed partially by virtue of the power of attorney, and also by virtue of my commission.

Mr. B. Did you show any other authority than your letter of attorney ?

A. I think I did. I left the power of attorney with them ; and I *think* I showed my commission, that it might seen how far those documents would authorize me to do what I did. I *think* I showed my commission.

Mr. B. Are you *sure* ?

A. I cannot say positively. I *think* I did.

Mr. B. Did you sign the instrument which you denominate the Belgian contract, in good faith ?

A. I did. Yes sir.

Mr. B. Have you been in Brussels since that time ?

A. Yes.

Mr. B. More than once ?

A. Yes, repeatedly. I was there in March, 1844. On my way to Paris and back to London, I spent some time there.

Mr. B. When were you *last* there ?

A. About 14th April.

Mr. B. Did you call at the office and see that same notary ?

A. I do not recollect it.

Mr. B. Did you not call with Mr. De Fiennes and myself ?

A. I do not recollect the time I was there.

**Mr. B.** Did you not call to see about the expenses of a copy of the contract ?

**A.** I recollect inquiring of you on the subject. Received the impression that the expenses of an official copy were not far from \$100, but I do not recollect how I obtained that idea.

**Mr. B.** Why did you inquire on the subject ?

**A.** I wished a copy of the contract myself, and should have preferred an official copy, but it was too expensive.

**Mr. B.** Why did you wish an official copy ?

**A.** To prevent the possibility of dispute at any subsequent period.

**Mr. B.** Did you inform yourself of the legal force and obligation of such a copy ?

**A.** I had no definite information on that subject, except what I received from yourself and Mr. De Fienues.

**Mr. B.** What was the information you received on that point ?

**A.** The impression was that by the laws of Belgium, no copy except an official one would be valid; that the original must be lodged with the notary; and furthermore, that a copy would be very expensive; and I concluded not to get one at that time, and afterwards being in haste, I neglected it.

**Mr. B.** Did you learn what was necessary to legalize such a copy for its use in a country foreign to Belgium ?

**A.** I did not inform myself on that point.

**Mr. B.** Were the Rules of Organization of the Royal Community of the Sandwich Islands drawn out before you left Belgium ?

**A.** They were, in an informal manner, not signed in the same manner as the original document.

**Mr. B.** Did you co-operate in drafting those Rules ?

**A.** I did.

**Mr. B.** Was it intended that those Rules should be in accordance with the Belgian Contract.

**A.** It was. There were some points discussed, but left loosely.

**Mr. B.** Have you a copy of those Rules ?

**A.** I have not ; Mr. Ricord has it.

**Mr. Ricord.** I shall submit it in evidence; I will file it now.

[Mr. Ricord here filed document C.—see Appendix.]

**Mr. B.** I have no further question to put on that point at present; I wish to draw your attention to the original contract. What was the nature of the commission given you by the Sandwich Islands Government ?

**A.** It was to secure the independence of the Sandwich Islands. I had no particular commission for Belgium. I had private instructions to go elsewhere, and blanks furnished me for that purpose.

**Mr. B.** Were there any limitations to that power ?

**A.** Not in my letters of credence; it was in the usual form, "We have commissioned," &c.

Mr. B. Was there anything in regard to what you should do, in your letter of instructions ?

A. I will introduce it.

[Files document D.—see Appendix.]

Mr. B. What became of your commission ?

A. The letters of credence were delivered over to each Government; the instructions I retained myself.

Mr. B. Did you leave at the office of the notary any evidence of your powers as commissioner ?

A. It seems to me there was a copy taken of *part* or extracts from my commission.

Mr. B. I have before me now a document which is the copy of that contract called the "Belgian Contract," of which Mr. Richards has spoken; a copy from that same notary.

[Mr. Brinsmade here read and filed document A.—see Appendix.]

Mr. B. That, gentlemen is the copy of the "Belgian Contract."

Mr. Ricord. Is that an attested copy ?

Mr. B. Yes.

Mr. Ricord. You purpose to file it, that I may have access to it.

Mr. B. I now propose to go into the historical facts of the acquisition of that property. I propose to go into the history of the operations of Ladd & Co. and their acquisitions, terminating in the Belgian Contract. This Contract I still hold binding upon the parties of the first and third part. I will now read the Contract of November 24, 1841, and the additional agreement of September 13, 1842, of extension. [Reads and files document B., 1, 2, & 3.—see Appendix.] This is the original; I will now proceed with the testimony of Mr. Richards. I must carry you back to the year 1835. Do you recollect translating into Hawaiian for Ladd & Co. an instrument of lease of lands and agricultural privileges for the Koloa plantation ?

A. I do.

Mr. B. Which of the firm applied to you to do it ?

A. Yourself.

Mr. B. Please state to the best of your recollection the circumstances, and the conversation which took place.

A. I do not recollect anything definitely, except that it was in great haste, and you offered to give \$20, or thereabouts to the High School at Lahainaluna if I would translate it.

Mr. B. Do you recollect suggesting any objections that might arise on the part of the King, to the terms of the lease ?

A. I do not.

Mr. B. Had there been any application previously for grants to the High School ?

A. I do now recollect that I as a committee had applied for a grant for the High School. I carried the money to pay for it, but

the King refused to give his signature for any land, and I did tell Mr. Brinsmade that it was doubtful if Ladd & Co. could get the King's signature, as the High School had not been able to get it.

Mr. B. Was there any exemption from taxes in behalf of the natives required by that compact, which you thought would be considered objectionable to the King?

A. I do not recollect.

Mr. B. Had any exemption from taxation on the part of the natives been refused on behalf of the pupils of the High School?

A. I believe it had been refused.

Mr. Ricord. I cannot see the applicability of these questions to the case before the arbitrators.

Mr. B. Do you remember that that matter of exemption from taxation was made with me a "*sine qua non*?"

A. I cannot state any particulars, though I remember that there was considerable conversation on the subject of its being made a "*sine qua non*."

Mr. B. Did you express a wish that we might succeed?

A. I did; but my recollection is very indistinct on the subject.

Mr. B. Had such exemption been granted in any case before?

A. There had been no written exemption before, that I know of, but sometimes verbal ones were granted.

Mr. B. Do you recollect referring to the result of your application and failure to obtain the land for a High School?

A. I recollect expressing fears that you would not get the signature of the King, on account of the clause providing exemption from taxation, but nothing further.

Mr. B. In translating the documents, do you recollect what sources of information you availed yourself of in stating the boundaries?

A. I do not recollect; but think they were principally from yourself in the English. I depended mainly on you.

Mr. B. Do you recollect any special messenger being sent by Kaikoewa to describe the boundaries?

A. I recollect some difficulties, and some difficulties about the boundaries; and some messenger was sent.

Mr. B. Was it in names of Rivers, &c.?

A. I do not recollect particulars.

Mr. B. Did you at that time make any special effort to render the terms and conditions of the lease intelligible, and to commend it to the King and chiefs?

A. I did.

Mr. B. Was there any question on the part of the chiefs, or other authorities, in regard to the authority of the King to grant such a lease?

A. There was some discussion as to whether the King and Kai-

koewa had a right, independent of Kinau, and anxiety was expressed that it was being done without a full understanding.

Mr. B. Was Kinau consulted by you ?

A. I think not directly by me, but by another. I think she *had* been consulted either by yourself or some other on the point, before the application for the School at Lahainaluna, and her reasons for refusing were that if she did anything for us, she must for others who applied ; and that was one ground why I doubted if you would succeed.

Mr. B. Was not the application for the school at Lahainaluna to *purchase* ?

A. There was no other idea than such as was according to native custom.

By the Board. It was not then for a fee simple purchase ?

A. I do not suppose she understood the application to be for a fee simple purchase.

Mr. B. Do you recollect whether Kinau set up any claim to lands in Koloa, embraced in our lease ?

A. I only recollect something said by way of allusion.

Mr. B. Were you interpreter between Kinau and Capt. Stribling when he was here in the Peacock ?

A. No, sir, I was not here.

Mr. B. After commencing operations in Kauai, were you apprised by Mr. Hooper of any obstacles thrown in our way ?

A. I visited Kauai in the summer of 1836, and received the impression from Mr. Hooper that he met with difficulties in his business, but not through any high officer of Government.

Mr. B. Did these obstacles result from the interposition of petty chiefs ?

A. I do not recollect, definitely, any thing about the first difficulties.

Mr. B. Do you recollect instituting any examination into the condition of the natives on the plantation ?

A. I recollect speaking upon the subject, and inquired, at Mr. Hooper's suggestion, of the natives, whether they were *pleased*. They said they were.

Mr. B. Do you recollect asking why they preferred working for Mr. Hooper ?

A. I do not recollect, definitely, the conversation on the subject.

Mr. B. What was the impression on your own mind in 1836 ?

A. I was, on the whole, pleased, but not decided in my feelings ; they were not so strong as those expressed by Mr. Hooper.

Mr. B. At what time did you enter the service of Government ?

A. On 3d July, 1838.

Mr. B. What was your title under that service ?

A. It was not very specific. I was chaplain, teacher and translator.

**Mr. B.** Did you still retain the title of Reverend ?

**A.** Yes, sir.

**Mr. B.** How long ?

**A.** It is still applied to me by some.

**Mr. B.** Had you been addressed by any other title before you left ?

**A.** I had not.

**Mr. B.** After you returned from the United States in 1838, were you appointed to visit Koloa ?

**A.** I went down in company with Hoahiti in 1839.

**Mr. B.** What was your business ?

**A.** I do not recollect fully. There had been some difficulty with a person named Thompson and others.

**Mr. B.** What specific reference had your visit to the interests of Ladd & Co ?

**A.** I believe it had something in relation to the erection of a new mill. I now remember that one of the principal objects, if not the principal object of our visit, was to select some lands for Mr. Jarves and Mr. Marshall.

**Mr. B.** Do you recollect being requested to examine into complaints of Mr. Hooper ?

**A.** I recollect there was some difficulty in obtaining men. I do not recollect fully. I think there was some difficulty with Hookaku.

**Mr. B.** Were any complaints made to you on the part of the petty chiefs that the plantation was the means of taking the men from service to their landlords ?

**A.** I recollect they complained that the men whose duty it was to serve their landlords, went away and engaged themselves to Ladd & Co.

**Mr. B.** What was your impression, at that time, of the effect of the various improvements and operations at Koloa upon the natives ?

**A.** I thought I saw evils ; but, on the whole, I thought the good overbalanced the evils.

**Mr. B.** Were there any agents sent down, or any letters written by the King to the Governor and Chiefs of Kauai, to protect the planters ?

**A.** I have no personal knowledge of any.

**Mr. B.** Who informed you of the error in the lease concerning the boundaries ?

**A.** I heard of it first from Mr. Hooper.

**Mr. B.** Was it an important error ?

**A.** Yes, very important.

**Mr. B.** Did Mr. Hooper propose immediately to correct it ?

**A.** Yes.

**Mr. B.** What relation did the amount of land excepted bear to the whole ?

A. The error embraced much more than double that which now stands in the lease.

Mr. B. Did it not embrace most of the island seen from Koloa ?

A. My recollection is very indistinct. It was more than double that designed to be leased.

Mr. B. Were you the medium of negotiating the lease for the new mill sight in Waiho-hono by the contract of 1839 ?

A. Yes, sir.

Mr. B. Were the interests of Government consulted in that negotiation beyond the mere annual rent of the land ?

A. There was one condition that the Government should cultivate fifty acres of cane, and another that it should be ground at the mill.

Mr. B. Did it seem to you a desirable grant in order to afford inducement to native industry ?

A. My views were the same as before. I thought well of it on the whole, but that there were some evils.

Mr. B. Were the interests of the other planters there consulted ?

A. I suppose there was some definite agreement between Ladd & Co., and Messrs. Jarves & Marshall, for grinding cane, and also with others.

Mr. B. Was there any representation made to you by the missionary gentlemen of the necessity of a new mill ?

A. Mr. Tinker had at one time a piece of ground planted with cane : my impression was that they all had an agreement with Ladd & Co. for grinding cane.

Mr. B. How was the enterprise regarded there by the missionaries and more intelligent chiefs in regard to its effect upon the natives ?

A. Their views were like my own. They saw evils ; but, on the whole, their views were favorable. The chiefs were not so favorably impressed as we were.

Mr. B. Do you know of any chiefs importuning Ladd & Co. or Mr. Hooper to have mills erected in other localities ?

A. I recollect that Deborah wished to have one. Kaikioewa planted a large piece with sugar cane at a great distance from Koloa, but he designed sending for a mill himself.

Mr. B. Do you know of any plans of Kaikioewa at Waiavaa ?

A. I recollect his plan for growing cane only.

Mr. B. Do you recollect nothing of a road to be made ?

A. I have no recollection of it.

Mr. B. Do you know of any efforts of the missionaries to induce Ladd & Co. to establish more sugar mills at Koloa ?

A. I do not. I only know the general fact, that the missionaries generally, with myself, favored your operations at that period.

Mr. B. Do you know any thing of a letter written by Messrs. Tinker, Lafon & Gulick to us on the subject ?



A. I do not recollect. They all had cane to be ground. [Mr. Brinsmade shows the letter.]

Mr. B. Are those the signatures of the gentlemen?

A. I have no doubt of the signatures. [Mr. B. reads and files two letters. See documents E. and F. in the Appendix.]

Mr. B. How were these enterprises regarded by the King and chiefs?

A. More favorably by the King than by the local chiefs. The views of the King were uniformly favorable—those of the chiefs less so.

Mr. B. Do you remember to have heard Kaikioewa's views when he was dying; that he expressed any regret at having opposed our operations?

A. I do not recollect. He was not generally in a state of mind to have confidence placed in what he said at that time. Some thought him deranged.

Mr. B. Do you know that Amelia, his wife, changed her conduct towards us after his death?

A. I do not recollect it.

Mr. B. When did you learn of my intention to dissolve my relations at the Sandwich Islands?

A. I believe my first suspicions were in October, 1841. Mr. Stetson first called my attention to it.

Mr. B. Do you recollect expressing any solicitude to retain me here?

A. I do very well; both by word, and, I believe, by letter.

Mr. B. Do you recollect any desire expressed on the part of the King and chiefs to retain me?

A. I should have no doubt of it. I knew that the King and chiefs felt a desire for you to remain.

Mr. B. Did you know at the time it was the wish of Ladd & Co. to close their copartnership relations?

A. I knew the period was fixed—supposed it not remote, and the conversation with Stetson confirmed my views.

Mr. B. Did I give you any information on that point?

A. Referring to the death of your wife, you said you had property enough to ruin one child, &c. &c.

Mr. B. Did you express solicitude in regard to the fate of the Koloa plantation?

A. I do not recollect: my feelings were in relation to your Consulship.

Mr. B. Did you express no fears in regard to the Koloa plantation falling into other hands?

A. I do now recollect expressing a preference that the business should be carried on by yourself rather than by others.

Mr. B. Had Ladd & Co. for a long time been urging upon the attention of the chiefs the importance of introducing foreign capital?

A. I recollect many discussions with you on that subject.

Mr. B. Was it with a view of extending generally the same system as at Koloa ?

A. It was something of that sort.

Mr. B. Were our suggestions considered friendly ?

A. I thought so, and others did.

Mr. B. Did you try to make them acceptable to the King ?

A. I did.

Mr. B. What were the views of the Mission generally on the subject ?

A. In 1836 the missionaries had extended discussions on that subject, and came to the definite conclusion that it was of great importance. They feared the introduction of many foreigners with great capital. They had no fear from the establishment at Koloa, but from similar ones in other hands they had fears.

Mr. B. Was there any fear ever expressed in regard to the operations carried on under our management ?

A. There were no fears.

Mr. B. Did any missionaries undertake agricultural operations ?

A. The missionaries took measures and felt anxious to stimulate native industry.

Mr. B. Do you know any instances ?

A. Messrs. Armstrong, Bingham & Bishop undertook agricultural operations.

Mr. B. Do you know the causes of their failure ?

A. The causes were very various. The missionaries could not carry them on as they were not suited to that employment.

Mr. B. Were these various efforts assisted by Ladd & Co. ?

A. I do not know to what extent.

Mr. B. Did you invite me to make suggestions before going away of plans to carry out these objects ?

A. We had a general and free conversation upon the subject.

Mr. B. Do you recollect our first meeting on the subject ?

A. I called on you at the suggestion of Capt. Stetson in the early part of 1841. Our object was to have Mr. Brinsmade still remain here as Consul. You spoke of your want of usefulness—that you was doing nothing for the nation. You suggested the introduction of foreign capital. I thought there was danger in the introduction of foreign capital in the manner you proposed, by numerous establishments. There was a question of obviating those dangers by a joint stock company.

Mr. B. What control was suggested that the King and chiefs could have over these establishments ?

A. The objection which I offered was from a fear that Government could not control numerous foreign establishments at these islands.

Mr. B. Was this plan suggested in order to obviate that danger?

A. Yes, sir.

Mr. B. Did you express the confidence that if a system of that kind could be placed under the direction of Ladd & Co. the danger would be obviated.

A. I think my anxieties were not confined to the introduction of foreign capital.

Mr. B. Did you not express the conviction that the business would be safe while under the direction of Ladd & Co.

A. I did, as my own feelings.

Mr. B. Was there any allusion to possible disputes with the natives about water privileges, &c.

A. Subsequently to this there was a great deal said about it.

Mr. B. After your first conversation (suggested by Stetson), did you converse with the King and chiefs on the subject?

A. I had conversed with them considerable before any formal proposition was made.

Mr. B. How long time before this and our meeting at Mr. Chamberlain's?

A. Either the same or next evening.

Mr. B. As the result of our first conversation did you engage to see the King on the subject?

A. I did.

Mr. B. What report did you make to me, in the presence of Mr. Chamberlain, of the views of the King?

A. I have no definite recollection—have no definite views.

Mr. B. At whose suggestion did we meet at Mr. Chamberlain's?

A. I believe it was by mutual suggestion.

Mr. B. Have you any distinct recollection of the conference?

A. We discussed the question of introducing foreign capital and foreign establishments at the Islands, like that at Koloa, and whether it would be safe and desirable for the King.

Mr. B. Was the subject of a joint stock company discussed?

A. Yes.

Mr. B. What was suggested as a means of preventing the dangers?

A. At that interview, one of the great things in the way was the very unsettled state of the Government in regard to other powers, that there was no formal recognition of independence, and we had fear that the Government would not be able to control and protect such interests.

Mr. B. Do you recollect the inducements that would be offered to capitalists.

A. Something of the kind was spoken of. Heard Mr. Brinsmade say he had influence at home, and would interest himself to obtain the recognition of independence.

Mr. B. Do you recollect any allusion to the Hudson Bay Company?

A. No sir.

Mr. B. Do you not recollect this sentiment expressed by Mr. Chamberlain, "If we can get the independence of the Islands acknowledged and our Government established on sure footing, we need have no fears of the gigantic powers of the Hudson Bay Company?"

A. I do not. I think the views of Mr. Chamberlain were just the reverse. There was no definite plan then arranged with which I was pleased.

Mr. B. Was it not distinctly arranged at that interview, that as the King was going to Lahaina in the Yorktown, that you should see him on the subject, and if he approved of the plan, send for the Premier and myself?

A. There was some agreement, but in no definite form. The general subject was to be proposed to the King, but do not recollect its particular features.

Mr. B. What conveyance was provided to take me to Lahaina?

A. I recollect some means being taken for you to go to Lahaina, but not definitely.

Mr. B. Was not the Paalua sent for me?

A. I do not recollect.

The Board being about to adjourn, Mr. Ricord remarked that he had taken no ground to exclude the evidence of Mr. Richards being offered to the arbitrators by the other party, because he wished to do away an impression which had been set afloat in consequence of his objections already urged against the validity of the Compact 13th July, 1846. He had offered in urging that objection to introduce documentary evidence in his possession, consisting of different amended drafts of the Compact in Mr. Ten Eyck's handwriting, with the view of showing that the claims, as now filed before the arbitrators, were different from those intended by the parties to the contract. These evidences of the intentions of the Compact were excluded in evidence by a decision of the arbitrators. He could object to the evidence now in progress, as Mr. Brinsmade contended the document signed at Brussels, and the one at Lahaina, were contracts, and capable of self-explanation as fully as the Compact of 13th July, 1846. He contended that the arbitrators having made such a decision ought themselves to have taken notice of it, and not accord to one party a thing which was refused to the other. He wished this noted, and claimed the same latitude of cross-examination when the direct examination should be closed. He wanted time, and would endeavor to be prepared with written interrogations.

Mr. Brinsmade remarked that he wished nothing further than that every fact should be elicited.

Board adjourned to Saturday, Aug. 29.

## SIXTH DAY.

The Board met at 10 o'clock.

After a short desultory conversation in regard to the printing of the different papers, evidence, &c.,

Mr. Ricord remarked that he would assume the expense of printing, provided it was printed so that it might be used as the examination progressed, and provided it did not become necessary to print it for reference abroad under the Compact.

Mr. Brinsmade said there could be no objection whatever to such a course ; but it must be distinctly understood that the expense must not fall upon him, unless reference abroad was resorted to.

Mr. Ricord wished the printing to be done at the Government Press, which was agreed to.

The subject was then dropt, it being agreed that all papers, &c., should be printed.

*Examination of Mr. Richards resumed by Mr. Brinsmade.*

Mr. B. After my arrival at Lahaina what measure was proposed for securing the independence of the islands ?

A. You proposed to the King to write to the three Governments of Great Britain, United States and France, and commit the letters to your care.

Mr. B. Who drafted the three letters ?

A. You wrote the English, and I the Native. The copies were in your handwriting. I do not recollect by whom superscribed.

Mr. B. Who were present when they were put in my hands ?

A. The King, Kekauluohi and myself.

Mr. B. Do you recollect the circumstances of our parting ?

A. The circumstances were of the most pleasant character. Mr. Brinsmade remarked that he was going to the United States, and, if necessary, to Europe, and promised to do all in his power to carry into effect the object of the letters, and mutual expressions of good wishes were made.

Mr. B. Was any allusion made by the King to any particular fitness of myself for the undertaking ?

A. The King proposed at one time to you to take an office: you refused: he expressed confidence in you, and proposed the same office as had been before given to another person.

Mr. B. Did you furnish me letters to your friends ?

A. I did. I do not recollect to what friends. Probably to Dr. Anderson, Clark of Brooklyn, and others.

Mr. B. To what visitor at these islands did you first disclose the measure of Government to secure their recognition ?

A. To Sir George Simpson.

Mr. B. Did you disclose to Sir George Simpson the contract of 1841 ?

A. I did not.

Mr. B. Are you aware that he saw that contract before he left the islands ?

A. I am not aware of it.

Mr. B. Was Sir George Simpson fully advised of the measures for obtaining the independence ?

A. He was in every particular.

Mr. B. What did he say of the measures adopted for securing the independence ?

A. He said he thought they would not succeed.

Mr. B. What further measure did he propose ?

A. He proposed that a Commissioner be sent from the islands as Minister.

Mr. B. Who was proposed as Minister ?

A. Myself. After the difficulties were spoken of, it was suggested by some one, and he consented to officiate himself.

Mr. B. When did you receive your appointment ?

A. I received my appointment on the 8th April, 1842, I think.

Mr. B. Had your appointment any reference to any business committed to me by Ladd & Co., agricultural, commercial or otherwise ?

A. It had not.

Mr. B. Had you any instructions relative to the contract of 1841 ?

A. I had not.

Mr. B. Did you take with you the King's copy of contract of 1841 ?

A. I took the King's English copy.

Mr. B. For what purpose ?

A. For the same general purpose that I took a great variety of other papers which were in my hands, that I might be prepared for every possible emergency.

Mr. B. Were those papers designed to enable you to carry out your general instructions ?

A. They were. The particular thing I had in mind was that I anticipated difficulty with the British Government, and meant to be prepared for all emergencies.

Mr. B. Did you take blanks with the signature and seal of the King and Premier ?

A. I did. The object of taking those blanks was to furnish myself with letters to other courts if necessary.

Mr. B. Had any effort been made by you to procure an extension of time in the lease of 1841 ?

A. I had proposed the extension of time of the lease to the King at the particular request of Mr. Ladd, and he gave me no definite answer.

Mr. B. Why did you propose it ?

A. I proposed it by particular request of Mr. Ladd, by letter.

Mr. B. Did you expect to meet me in the United States or Europe ?

A. I did.

Mr. B. Was there a verbal understanding with the King that you should ascertain what steps I had taken, what had been done with those letters, &c., before you commenced operations ?

A. There was.

Mr. B. Was Mr. Ladd fully acquainted with the subject just as it stood ?

A. He was ; and nothing was concealed that I am aware of. He and Mr. Hooper both approved and both were consulted.

Mr. B. To whom did you first make known your intended mission ?

A. I first made known my intended mission to Mr. L. Chamberlain or Dr. Judd, after it was agreed with the chiefs, and even before it was fully decided, and I was sent expressly by the King to consult my friends.

Mr. B. Were Ladd & Co. confidentially consulted through all your operations ?

A. Ladd & Co. were confidentially consulted on all points relating to the subject in regard to the mode of arrangements. Mr. Ladd, Mr. Hooper, Dr. Judd and Mr. Chamberlain approved of the plan.

Mr. B. Was it suggested that I might be detained in my operations by your visit ?

A. It was not, that I recollect, but the contrary.

Mr. B. What did you expect would be done by me ?

A. My expectations were, that from the interest you felt in the welfare of the islands, that you would not only deliver the letters which had been entrusted to you, but would use all the influence you had with the United States Government and co-operate with me.

Mr. B. Did you write me before you sailed ?

A. I did. [Mr. Brinsmade read and filed two letters, one of March 31, 1842—June 15th, 1842.] Those are my letters. [See Appendix—Doc. G. and H.] The “Triad plan” alluded to was the plan in reference to obtaining from the three Governments of France, Great Britain and the United States the recognition and guarantee of independence.

Mr. B. Did you write me from Washington to meet you in London ?

A. I did.

Mr. B. By what considerations were you urged by Mr. Webster to hasten to Europe ?

A. I was not urged by Mr. Webster to hasten to Europe. I urged upon him the transaction of our business that I might go to Europe.

Mr. B. Did he allude to my being in Europe ?

A. He did not. I called his attention to the fact of your having been in Washington, and could not learn any thing from him as to what you had done. He promised to look in the archives for that purpose. I called, but the examination had not been made. Mr. Webster was ignorant, or appeared to be ignorant, of Sandwich Islands affairs. When I mentioned your name, he recollected having seen you.

Mr. B. Have you no recollection of repeating to me that Mr. Webster wished you to hasten to Europe before I left ?

A. I have not.

Mr. B. When you were in Boston, who applied for your influence to obtain the Consulate at the Sandwich Islands ?

A. I do not know that any person requested any influence further than by certificate. Mr. Jarves applied. I gave him an indefinite certificate: it was a conditional one. I mentioned that if Mr. B. was removed, which the Sandwich Island Government did not wish, then we should wish Mr. Jarves appointed.

Mr. B. What means to defeat Mr. Jarves' plans were taken by you ?

A. I took no means to defeat Mr. Jarves' plans.

Mr. B. Did you write to Major Williams on that subject ?

A. Hardly on that subject. I wrote that it was not the wish of the Government that Mr. Brinsmade should be removed. I took no copy, and do not recollect the particulars.

Mr. B. Have you no recollection of instituting a comparison of the advantages of my being retained with the recognition which you had obtained ?

A. I can't call to mind any form of expression. I said that the Sandwich Islands Government would be losers by a change. I had a strong wish that you should remain.

Mr. B. Why did you write to Major Williams ?

A. I had heard incidental reports that there might be various applications for the consulate. I wished his influence, and wished him to know my views and those of the Government.

Mr. B. How soon after you gave Mr. Jarves his certificate, did you write to Major Williams ?

A. But a day or two after.

Mr. B. Was it not the same evening ?

A. I can't say it was the same evening ; I wrote very soon ; before I sailed for Europe, the time was very short.

Mr. B. After your departure from the Islands, did you not receive definite instructions from the Government in relation to the contract of 1841.

A. I did not. I think there was no allusion in any way until a later period than that.



Mr. B. Did you not receive any intimation from Dr. Judd of the quantity of lands belonging to the King?

A. That idea was conveyed, I should think about Nov., 1843; I am sure that in earlier letters there was no allusion whatever.

Mr. B. Did you receive letters from Dr. Judd, written before he had heard from you from the United States?

A. I did; quite a number. I *do* recollect this idea communicated in an early letter, that Dr. Judd alluded to a negotiation between Haalilio and Mr. Bernard, and alluded to an objection on the part of Mr. Ladd.

Mr. B. Did you not show me a letter from Dr. Judd?

A. I have no definite recollection. I presume that you saw all my letters from Dr. Judd.

Mr. B. Do you recollect no allusion in that letter to the contract of 1841.

A. I cannot state positively that there was no allusion; I do not think there was in the early letters.

Mr. B. In whose handwriting was your first despatch to Government from England?

A. In my first despatch to the King, the copy was in the handwriting of yourself; it was written from England about the last of March; it was written by me, and copied by Mr. Brinsmade.

Mr. B. Was there any allusion or information given to the engagements taken by yourself, Haalilio and Sir George Simpson, in the Belgian Contract?

A. There was some allusion I think in relation to Mr. Brinsmade's plans, and the facts alluded to, but still no definite information given. I cannot tell positively which particular letter conveyed the information. It stated that Sir George Simpson, and Haalilio, and I, had been to Brussels.

Mr. B. Did you advise the Government that you had guarded the point of allegiance?

A. I think we alluded to the subject, but there was nothing definite.

Mr. B. Did you see Haalilio's letters?

A. Rarely; those that he received I saw most of.

Mr. B. Did you see his letters at that time?

A. I do not recollect definitely.

Mr. B. Did you state why Sir George Simpson, Haalilio and yourself had been to Brussels?

A. I presume I did.

Mr. B. Why was it?

A. We went to Brussels because we thought there was a prospect that we might make use of the influence of Leopold, to produce a favorable effect on the King of France, and for that purpose, Sir George Simpson procured letters from high sources to Leopold.

Mr. B. Had your going there any reference to a determination on propositions made to me then ?

A. It had some reference to it.

Mr. B. By whom were you presented to Leopold ?

A. I was presented by Count de Hompesch.

Mr. B. Did you afterwards receive more definite instructions from your Government on the subject ?

A. I received this, and this was the only thing specific : to be exceedingly cautious how I made any representation that there was a large quantity of unimproved lands in the hands of Government.

Mr. B. When was that caution received ?

A. I think that caution was received in October, 1843.

Mr. B. Did you mean to say that caution was after they had heard from you ?

A. They could not have received any communication from me on the subject; they may have received one, but I am not sure. I received instructions to enter into no negotiation whatever which could in any way involve liability on the part of Government, except so far as was embraced in my power of attorney. I do not think that I ever received any instructions as to what I had done, for I did not communicate so fully as to call for any.

Mr. B. Have you no recollection of any communication to Government on the point of allegiance ?

A. I could not say positively what I did communicate in regard to it. It was a very important point in my own mind.

Mr. B. When was that communication received here ?

A. That communication was probably received here about November, 1843, written after the signature of the documents.

Mr. B. Did they receive any dispatch at a later date on the subject ?

A. I should think it very probable.

Mr. B. To what American gentleman in Paris did you show a copy of the Belgian Contract ?

A. I showed it to Mr. Boardman.

Mr. B. Did you write me of his views ?

A. It is very possible ; I am not sure. I had a conversation with him on the subject.

Mr. B. What views did he express in regard to the Contract ?

A. Mr. Boardman manifested some considerable doubt and hesitancy, but yet, in the form under which I represented it, said if kept under good control and well managed, it would be beneficial to the Islands.

Mr. B. Was that Contract made a subject of conversation between us ?

A. Mr. Boardman, you, and I conversed in London and Paris about the Contract.

r. B. What opinion did he express of its effect in regard to merchants here ?

. He thought that merchants doing business now would be benefited, but that its remote effects would be to swallow up all other interests.

r. B. Did he not express the idea that just in proportion to the development of the resources of the country would be the increase of general commerce ?

. I do not recollect definitely.

r. B. What were Sir George Simpson's views ?

. Sir George Simpson on the whole, thought it would have no effect on the Hudson Bay Company ; he thought the Hudson Company would be able to compete with it and that it would open an increased market for the produce of Oregon. He had a general idea of the general terms of the contract.

r. B. When you wrote to Dr. Judd in what terms did you speak of the contract ?

. When I wrote to my Government last I said the prospects that the company would go into operation, though there was some doubt.

r. B. Do you not recollect calling my attention particularly to a portion of the letter,—the assurances that had been given you by individuals in Belgium ?

. Those were alluded to. I recollect speaking of the merchants engaged in it, that we could place faith in them.

r. B. Had you previously to that letter ordered for Government account the funds loaned me to be invested ?

. I recommended that that amount should be invested in certificates for the Government and myself.

r. B. Did you advise Government of the fact ?

. I do not recollect it.

r. B. What was the date of your dispatches ?

. April, 1844.

r. B. When were they received here ?

. I do not know ; they were generally received very regularly.

r. B. Did you not show the copy of the Belgian Contract in the United States ?

. I did not.

r. B. Did you not converse with any corporate body on the subject ?

. Not definitely.

r. B. Was you frequently at the missionary rooms ?

. I was.

r. B. Did you discuss the subject with the gentlemen at the missionary rooms ?

. I did not ; I recollect no allusion to it.

Mr. B. Did you not learn there that any views of the mission here were communicated to the Board ?

A. I did not.

Mr. B. Did you not converse with Mr. Hunnewell on the subject?

A. I did, but not in the form of conference or consultation.

Mr. B. What were his views ?

A. He expressed the idea that any large establishment of the kind would be injurious to individual merchants.

Mr. B. Did he give any advice on the subject, or recommend you to pay for it in order to get rid of your obligation ?

A. I think he expressed views that it would be injurious to the nation. I do not recollect any definite conversation on the point.—He expressed satisfaction that it was quashed.

Mr. B. Did you report to Government on your return in regard to the Contract ?

A. I never gave any written report; in private conversations with the King and Premier, gave the whole history.

Mr. B. Did you report also what had been done with the contract of 1841 ?

A. I stated that it had been sold to the Belgian Company.

Mr. B. How early after your return ?

A. Two or three weeks.

Mr. B. To whom did you first show the copy of the Contract after your return ?

A. I am not certain whether I showed it first to Mr. Ladd, or Mr. Ricord. I had two copies, and am not certain to which I showed it first.

Mr. B. Was it a correct copy ?

A. I supposed it to be a correct copy, except mere names.

Mr. B. Do you recollect expressing any opinion to Mr. Ladd of its validity ?

A. All I recollect on that point was calling his attention to the last letter I had from you as evidence that the whole was quashed.

Mr. B. Did you show Mr. Ladd that letter ?

A. I did not.

Mr. B. What became of it ?

A. It was given Mr. Ricord by order of the King; it must however have been in my hands at that time.

Mr. B. Did you not make a remark to Mr. Ladd that the Contract had expired by limitation.

A. I am not positive. I thought at that period it had not expired.

Mr. B. Did you allude to any oversight of yours to Mr. Ladd ?

A. I think very possible that I may have said something about an error in not having a right to annul the Contract. I thought it unjust that one party alone should have the right to annul.

Mr. B. Have you at any time expressed dissatisfaction at the acts of Government towards Ladd & Co.?

A. I have expressed *regret*, but not dissatisfaction at the state of things between the Government and Ladd & Co.

Mr. B. Have you made any suggestions for compromise between the Government and Ladd & Co.?

A. I have proposed general suggestions of a compromise.

Mr. B. To whom have you made these suggestions?

A. I have mentioned it to the King, Mr. Ricord, and others.

Mr. B. Have you to Ladd & Co.?

A. I have suggested no plan to Ladd & Co., but only expressed my feelings that it would be desirable that there should be a compromise.

Mr. B. Have Ladd & Co. addressed you any communication on the subject at your suggestion?

A. They have, but I am not aware that it was at my suggestion.

Mr. B. What was the date of their letter?

A. Immediately subsequent to my return. I should think it was early in May, 1845.

Mr. B. Had the communication any proposition?

A. It had; I am positive that if it were at my suggestion, that it did not originate with me. The propositions for compromise were entirely original with others in the form in which they were made.—All the particular suggestions were original with Ladd & Co.

Mr. B. In suggesting a written proposition, did you offer to keep it to yourself?

A. I did.

Mr. B. Did you?

A. There were two distinct propositions; one was of a more open character. I think I have the communication in my trunk now. There was an injunction of secrecy by Mr. Ladd or Mr. Hooper. One of the propositions was laid before the members of the cabinet, and some action amounting to an assent was taken upon it. [See Appendix—documents I. and J.]

Mr. B. What relation did you sustain to Government at that time?

A. I had no official relations.

Mr. B. Had you authority to confer with Ladd & Co. on the subject?

A. I had no other authority than my own kind feelings.

Mr. B. Were there any other efforts made to enable Ladd & Co. to go on?

A. There were.

Mr. B. What was the other proposition?

A. It was proposed that the creditors should advance a certain sum to enable Ladd & Co. to proceed with their business.

Mr. B. Was it proposed that some action of the Government in relation to Ladd & Co.'s property should be withdrawn? was there any application by Ladd & Co. to postpone the sale at Koloa?

A. They expressed a wish that it should be done. Dr. Judd said that the sale was the only way in which the debts could be secured; if postponed it would affect them injuriously.

Mr. B. Was there no other reason?

A. I recollect no other; it seems to me something was said that if not done at that time, it could not be at any future period.

Mr. B. Did you have frequent interviews with the cabinet on the subject?

A. Not as a cabinet; but I conversed in an informal manner with the members of it. The matter was not referred to me officially, but some of the officers of Government recommended Ladd & Co. to confer with me. I did not know the position of their affairs then, nor do not now.

Mr. B. Did the cabinet authorize you to effect a compromise?

A. The cabinet in an informal manner did authorize me to effect a compromise. A resolution was passed about the time of your return, that all matters relating to Ladd & Co. should be placed entirely in the hands of Mr. Ricord. This was obligatory on all the members of the cabinet.

Mr. B. When did you advise Government of having furnished me with the loan of November 8th, 1843?

A. I do not recollect; I did not do it at an early period.

Mr. B. Was there any advice of the loan from the Hudson Bay Company?

A. There was, but not from me.

Mr. B. What was your honest purpose in loaning me that sum.

A. My honest purpose was to relieve you from an embarrassment, and from the kindest personal feelings.

Mr. B. Did that embarrassment arise from my detention in Europe?

A. I suppose it did.

Mr. B. What caused that detention.

A. Your own business, your own plans in relation to the Belgian Company.

Mr. B. Was it your expectation at the time you loaned me money in Europe, that the accommodation would be used to the disadvantage of Ladd & Co. here?

A. I do not recollect. Any such idea did not enter my mind.

Mr. B. What was the condition upon which the Belgian Contract was to go into operation?

A. One condition was that France should recognize the independence of the Sandwich Islands.

Mr. B. What caused a delay on the part of France?

A. The delay on the part of France was occasioned by the proceedings of Lord Paulet : that was one thing.

Mr. B. Have you constantly endeavored to protect the faith and honor of the Government in the Belgian Contract ?

A. I have constantly. I should add, my own faith and honor, and that of the Government so far as connected with it.

Mr. B. Have your efforts in behalf of Ladd & Co. been favored by the Government ?

A. They have.

Mr. B. What has been the nature of those efforts ?

A. They have been to secure a compromise ?

Mr. B. Has there been an injunction laid on you in reference to any acknowledgment of the Belgian Contract ?

A. There has not. An injunction was laid on me after your return against taking up the subject in any way with you.

Mr. B. Were all the interests in the Contract taken out of your hands ?

A. They were. "Out of my hands" is, perhaps, incorrect. Shortly after my return the King ordered me to deliver up all my papers to Mr. Ricord.

Mr. B. Did the King speak to you in terms of reproof in relation to that Contract ?

A. The King expressed to me great regret, hardly reproof, and spoke of communications from Haalilio. These regrets were expressed at the time of my private report to the King.

Mr. B. Have you been told of any measures being taken to prevent that Contract from going into effect ?

A. I don't know of any thing definite on that point having been said to me.

Mr. B. Do you know of any refusal to grant lands in consequence of the Belgian Contract ?

A. I do not know that there was any on that account : think it was implied. I think there were some applications for land refused or delayed until my return.

Mr. B. Have you written to Brussels since your return on the subject of Ladd & Co.'s affairs ?

A. I have within a few days, but not at an early period.

Mr. B. Do you know of any letters being addressed to persons in Brussels, by order of the Government, on the subject of Ladd & Co.'s affairs ?

A. I do not. I think it probable that communications have been addressed to Belgium, but know of none. I think there may have been, having heard persons speak of them.

Mr. B. Have you furnished the address of persons in Brussels for the purpose of having communications forwarded ?

A. I have. I have furnished the address of Mr. Bourson, Count de Hompesch, and possibly to Mr. Obert.

Mr. B. To whom did you furnish them ?

A. To Mr. Jarves.

Mr. B. For what object ?

A. That they might become acquainted with the true state of affairs at the Sandwich Islands ?

Mr. B. At what time did you furnish these addresses ?

A. Between July and September, 1845.

Mr. B. Do you know what publications have been forwarded ?

A. I do not.

Mr. B. Have you at a recent period forwarded communications in regard to the affairs of Ladd & Co. to any person in Europe or United States ?

A. I have forwarded some to Mr. Barclay.

Mr. B. Do you know whether others have forwarded communications to any person in Europe on the subject ?

A. I do not. My letters were private.

Mr. B. Have you had any consultation with any person in reference to any statements relating to Ladd & Co.'s affairs before they were published ?

A. I have not. I have accidental knowledge of statements prepared by individuals, and my views taken in a private way. I cannot swear positively that no statement has been submitted to me before publication. I have no definite knowledge of any.

Mr. B. By whom were these statements prepared ?

A. By Mr. Jarves.

Mr. B. Have you endeavored in any letters to your friends to show the state of Ladd & Co.'s affairs ?

A. I have not.

Mr. B. Have you had any conversation in regard to the effects abroad of any statements published in relation to Ladd & Co.'s affairs ?

A. I have not.

Mr. B. Was the delay in the publication of the new laws, occasioned by the existence of the Belgian Contract ?

A. I was not aware of it. I know of nothing in the new laws having reference to the Belgian Contract.

Mr. B. How long was it after your return before you received an official appointment ?

A. Nearly a year: my present was my first appointment.

*Cross-examined by Mr. Ricord.*

Mr. R. What was the express object of your mission to Europe in 1842 ?

A. The express objects were to secure the recognition and



guarantee of independence by Great Britain, France and the United States, and to settle all existing difficulties.

Mr. R. Were those objects particularized to you in any other way than as they appeared to you in your general letter of instructions ?

A. We had several conversations with Sir George Simpson and the King in relation to all the difficulties.

Mr. R. Was there any allusion to the Belgian Contract in your instructions ?

A. There was not.

Mr. R. Are those your instructions as a diplomatic agent ?

A. They are. [Mr. Ricord read and filed Doc. D. No. 2—see Appendix.]

Mr. R. Is that your letter of credence ?

A. It is. [Mr. Ricord reads and files Doc. K—see Appendix.]

Mr. R. Were like powers and credentials given you to the King of Belgium ?

A. There were none made out for Belgium.

Mr. R. Were like credentials given you to the King of France, and to the United States ?

A. There were.

Mr. R. How did you represent the King of the Sandwich Islands in Belgium ?

A. I represented the King in Belgium on the authority of my general instructions to go to other countries if necessary.

Mr. R. Did you accredit yourself to the King of Belgium under those blanks furnished you here ?

A. I did not. I felt some hesitation in doing so.

Mr. R. Were the instructions explained to you by the King and chiefs before your departure ?

A. I had several conversations with them on the subject, and particularly regarding the difficulties, some of which had been made public, such as Charlton, Skinner & Dominis, and others which have not been made public.

Mr. R. Who drew up your diplomatic instructions ?

A. I drew up my own letters of instruction and credence.

Mr. R. What was your guide ?

A. Elliot's Diplomatic Code.

Mr. R. Were the letters of instruction and credence thoroughly understood by the King and chiefs as confining you to procuring the recognition of independence, and the settlement of difficulties with England ?

A. They were voluntary, and fully understood by the King.

Mr. R. Did the King consider them of a purely diplomatic nature ?

A. I do not think the King understood it as a diplomatic affair,

or the term "*diplomatic*," but that I was to act fully up to my instructions.

Mr. R. How did you consider them ?

A. I considered my power as diplomatic only.

Mr. R. Were any private instructions, written or verbal, given you by the King connected with the object of your letter of credence, but disconnected with the object of your mission to England ?

A. There were not. The only idea that entered into the King's mind was to give me ample power for the purposes.

Mr. R. Did you at the time of being accredited as diplomatic agent or while you were in Europe, and do you now consider that your diplomatic powers were confined to the two purposes already mentioned, and that the accomplishment of those purposes terminated your powers ?

A. I considered that my diplomatic powers terminated when the recognition and guarantee of independence was obtained.

Mr. R. Were you the bearer of a private letter of attorney from the King ?

A. I was.

Mr. R. Is that it ?

A. It is.

[Mr. Ricord files document L.—see Appendix.]

Mr. R. What was the meaning and intention of the first clause ?

[Mr. Ricord here reads first clause.]

A. It had a special reference to the collection of a debt of Capt. Winship, said to be owing the King, another object was the collection of bonds given by Captains of vessels for returning native seamen.

Mr. R. Was a similar power of attorney given to any one else ?

A. A similar one was given to Thomas J. Farnham for the same object. There was one particular thing in this, which was not in his, in relation to negotiating a loan.

Mr. R. Did you consider the King's understanding of this clause to operate on you as instructions respecting it ?

A. The King's understanding was not in my mind ; I think he had no definite ideas on the subject.

Mr. R. What do you understand to be the meaning of the second clause ? [Reads.]

A. That clause referred to the negotiation of a loan. It did not authorize negotiating for more than the amount specified, viz: \$50,000. I had no definite plan for getting it. Letters of credit were drawn on the Hudson Bay Company, but it was not certain that they would be available, and to carry out the purposes of the mission it was necessary to be secure. It was understood that it was to be money or circulating medium.

Mr. R. How do you understand the third clause ? [Reads.]

A. I had some doubts as to the propriety of that clause in re-

lation to Mr. Farnham, because I thought it would give him power to do every thing according to the words. I took the idea from Mr. Farnham that it was necessary as a form.

[Mr. Ricord said his questions were thus specific as to the understanding, as he meant to bring the power of attorney within the legal construction of powers.]

Mr. R. Did you consult any one on this subject ?

A. With reference to Mr. Farnham, I consulted Mr. Frelinghuysen. He said that a power of attorney must be construed in reference to the objects mentioned in it.

By the Board. Did you consult Mr. Frelinghuysen as an attorney ?

A. I went to him for advice on this subject.

[Mr. Ricord said that he meant to confirm the opinion of Mr. Frelinghuysen by books.]

Mr. R. What is the meaning of the fourth clause ? [Reads.]

A. This was the power to seal and sign ; it was also put in by Mr. Farnham.

Mr. R. How did you understand it ?

A. I should have understood it at that time as being as broad as it was expressed. I consulted Mr. Frelinghuysen, who said the power must be confined to the specific objects mentioned in it. Mr. Frelinghuysen examined the whole document.

Mr. R. Were there any written instructions given with the power of attorney ?

A. There were no written instructions in relation to the power of attorney.

Mr. R. How do you regard the letter of credence and power of attorney, as connected or distinct ?

A. I consider the power of attorney and the diplomatic instructions as distinct powers.

Mr. R. How came the letter of attorney to be sent abroad ?

A. The idea was first broached at the time Mr. Farnham was here.

Mr. R. Who suggested it ?

A. The King spoke of my attending to the business previously given to Farnham, and I then stated to him that I should want a power of attorney.

Mr. R. Were the chiefs consulted ?

A. None of the chiefs were consulted but the Premier.

Mr. R. By the laws of the Hawaiian Islands, did you understand that the King in person, without the concurrence of the chiefs, could barter away such privileges as are included in the contracts of the 24th of November, 1841, and 17th of May, 1843.

A. I think he could *if correctly interpreted*.

Mr. R. In accordance with the constitution ?

A. Yes; in accordance with the constitution, *correctly interpreted*.

Mr. R. What was the usage and law ?

A. I think they have usually been in the habit of having more general consultations with chiefs, even in small matters, according to custom.

Mr. R. How long have you been acquainted with the usages ?

A. I have known the usages of the Island since 1823.

Mr. R. What were the native rights agreed to be respected in the contract of 1841 ?

A. I suppose they embraced all that were secured to the landlords and tenants by the law.

Mr. R. What did those rights of occupancy secure ?

A. The laws expressly prohibit any individual being dispossessed of his lands and improvements, unless they violate the laws. This is merely my opinion.

Mr. R. Did the king and chiefs, or did you at the time the power was made out, understand it as authorizing you to enter into such a contract as that of May 17th, 1843 ?

A. I never thought of such a thing as the Belgian Contract at the time the powers were given me.

Mr. R. Did you or did they understand it as authorizing you to sell lands and privileges, agree to the remission of duties, transfer municipal rights, or to guarantee the transfer and the validity of past engagements on the part of the King ?

A. Those points did not come into my mind, and I am confident that they did not into theirs.

Mr. R. Do you not consider yourself to have acted without authorization in regard to the contract of 17th May, 1843 ?

A. In one respect I think I did, in another I think I did not.

Mr. R. In what respect did you so consider yourself authorized ?

A. I showed my documents, and said, "Gentlemen, there are my powers, see what they are."

Mr. R. Did any question with them arise in regard to your powers ?

A. Their question was "Have you powers ?" I said that no such thing was contemplated before I came away ; but there are my powers. I was further asked, what would the King say ? I answered with a smile, I thought any thing I did would be ratified, because he had confidence in me.

Mr. R. What was this predicated upon ?

A. I was not authorised by specific instructions, but I thought he would sustain me. I took the responsibility, holding up my documents.

Mr. R. Did it not occur to you that you might render yourself personally responsible ?

A. I don't know that the idea occurred to me that I might make

If personally responsible at the time. If I had kept anything from the parties in Belgium, I should have exceeded those powers.

**R.** If you did an act not contemplated, ought the King necessarily to be bound by such an act?

If the powers are sufficient, I am of opinion that he is responsible. I do not consider that the King was bound by anything ratified, except the specific things mentioned in the power of attorney.

**R.** Did you understand at the time you received the power of attorney, that you were to report your acts under that power of attorney for ratification?

I had no definite idea on that point. I did not think it necessary that what I did under the power of attorney should be immediately reported, as should those acts of a diplomatic character.

**R.** Is there any evidence of Mr. Brinsmade's so understanding?

There is a letter from Mr. Brinsmade to me, as evidence that he understood that it was necessary for the King to ratify.

**Mr. Ricord** here produced a letter from Mr. Brinsmade to Mr. Richards, dated 18th October, 1844, and read it in evidence that Mr. Brinsmade understood ratification to be necessary. See Doc. M. in appendix.]

**Mr. Brinsmade** objected to making portions of that letter public, saying that they related to private matters.

**The Board** said that any private matters contained in the letters, coming on the case, should not be published.

**Mr. Ricord** said that the private portions of that letter were important to his case, he introduced it to prove three points.

That ratification was distinctly understood by Mr. Brinsmade.

To show that they abrogated the Contract in October, 1844.

That Mr. Brinsmade was indebted for the means of livelihood to Mr. Richards while in Europe.

**R.** Have you ever reported your acts under that power of attorney, and has the King ever ratified your acts in regard to the acts of the 17th May, 1843?

I have reported to the King as already stated. I am not aware that he has ever ratified in any way, or had an opportunity to.

**R.** Has the King approved of your acts under your power of attorney?

The King expressed much anxiety on this subject, and enquired if the Cabinet had seen the papers, and directed me to hand the papers to you. They were first referred to you in private consultation, and after the order from the King I passed them all in. The King felt apprehensive lest difficulty should arise. The King

did not express his mind definitely to me on the subject. In the first conversation he did not decidedly disapprove, but expressed anxiety.

Mr. R. Was the King disposed to co-operate with the Belgian Company ?

A. He felt fear and anxiety, but I do not know how far he would co-operate. He would not readily express disapprobation with a friend, as he considered me to be.

Mr. R. Have you reported your acts as a diplomatic agent under the letter of credence and general letter of instructions ?

A. I have reported to the Legislature, and a resolution was passed on the subject. I supposed that by specific acts of Government my diplomatic transactions were ratified.

Mr. R. What acts of the Government do you allude to ?

A. What was ratified particularly was the convention regarding Charlton's land as presented by Gen. Miller.

Mr. R. Who required that ratification ?

A. General Miller.

Mr. R. What was the feeling of the Premier and Chiefs on reading the notes of Haalilio ?

A. From reading the notes of Haalilio, the chiefs expressed anxiety, if not disapprobation.

Mr. R. What was said in Belgium in regard to your powers at the time of signing the Contract ?

A. I do not recollect that any thing was said about the powers at the time of signing ; but that was discussed at the first conversation in March. They enquired for my powers: I went to my room and showed the papers. The queries of others brought to my mind the question of the extent of my powers. Mr. Brinsmade expressed the opinion that the powers were sufficient. He appeared to manifest a wish that the powers should be sufficient to transact the business.

Mr. R. In what relation did you consider yourself as putting the King in regard to the Belgian Contract at the time of signing: as one of the three parties ?

A. As that of the giver and receiver. He gave certain things to the Belgian Company, and received certain things.

Mr. R. Explain your understanding of the position of those parties.

A. The King gave certain things to the community, and the community were to give certain things to him.

Mr. R. Did you consider Ladd & Co. any thing more than stock-holders ?

A. I cannot state any thing as a matter of fact, but as a matter of opinion.

Board adjourned to Tuesday, Sept. 1.

## SEVENTH DAY.

*Cross-examination of Mr. Richards by Mr. Ricord, continued.*

Mr. R. Was it understood that the first act after the signing of the Contract was to emanate from the Belgian Company of Colonization ?

A. As I understood it, they were to establish a community to be called the Royal Community of the Sandwich Islands.

By the Board. Was the primary action to be taken by them ?

A. Yes, as I understood it.

Mr. R. Were there any precedent acts of the King necessary to have that Contract carried into execution ?

A. As I understand it I do not see how there could have been.

Mr. R. Was mention made at any time of an agent to be sent out to the Sandwich Islands by the Belgian Company of Colonization ?

A. There was. The secretary of the company, Mr. Obert, came to Paris to see me as though for that purpose alone, and in various conversations they expressed rather a wish to do it, but this was the only serious conversation that I recollect.

Mr. R. Is there an allusion in Mr. Brinsmade's letter to you, of October 18, 1844, of such an agent ?

A. I think there is, with a different object, *that* seemed to rather emanate from Mr. Brinsmade himself. The one was to accomplish the objects of the Company, and the other to accomplish the object of Mr. Brinsmade.

Mr. R. Whose duty was it understood to be to obtain the King's ratification to the Contract of 1843 ?

A. That point was not discussed, but it was understood that it was to be done. I suppose it was the duty of the agent of the Company, or whoever was to come to execute the Contract.

Mr. R. Did you ever receive a copy of the Contract from the Company of Colonization ?

A. I never did receive an official copy in any way. I never had intercourse with any of the Company on the point of receiving one.

Mr. R. Did you ever receive letters of attorney from the Company to act for them in the Sandwich Islands, or a verbal request ?

A. Nothing more than as it was understood that I was to be President of the Board of Directors.

Mr. R. Did you consider your appointment as director as an authorization to act as agent ?

A. I considered that the Belgian Company of Colonization had no right to object ; but the King must of course ratify my appointment, or if he chose he might have turned me out and appointed another.

Mr. R. Did you ever attempt to exercise your authority as director ?

A. I never did; because I am not aware that the community under which I was appointed has been formed. Though I *did* consider that I had more power than any one else to act. The party of the third part could act in no other way than by an agent, which agent had not been appointed.

Mr. R. Whose duty was it to open the books of stock shares under the Contract?

A. It was the duty of the Belgian Company of Colonization to open the books of stock; though I did receive the impression that there was some understanding between them and Mr. Brinsmade. I did not know what.

Mr. R. Do you know if the books for stock subscriptions were ever opened?

A. I do not. I know there has been talk on the subject, but have no evidence. I did hear, and have every reason to believe, that Count de Hompesch had attempted to negotiate with the Rothschild's, but the negotiation failed. I know also of conversations between members of the company and other persons, and encouragement was given that they would subscribe; but do not know of any thing formal or binding.

Mr. R. Were you questioned in Belgium as to whether the King would subscribe?

A. I was.

Mr. R. Has the King ever been afforded an opportunity to subscribe to the stock of the Company as agreed upon by the Contract?

A. I do not know that he has. No books were ever presented to me, but I was merely asked.

Mr. R. Do you think you would be likely to know if an opportunity had been afforded His Majesty of taking up stock?

A. I think I should.

Mr. R. Has there been any offer to subscribe?

A. There has not been an offer, as far as I know.

Mr. R. Whose duty was it to make the first report?

A. It was the duty of the agency appointed by the Belgian Company of Colonization to make the first report.

Mr. R. Who was to organize that agency?

A. The Belgian Company were to appoint a Secretary and two Directors. The King was to appoint two Directors besides the President.

Mr. R. Why has that Contract not been carried into effect?

A. I do not know what causes have prevented the Belgian Company's moving in the case. I tried to ascertain before I left the United States, but never could. I suppose it was their duty to move and carry it into effect. Why they did not move, I don't know. I don't know how the Contract could be carried into effect till they did move.



Mr. R. Has the King of the Hawaiian Islands opposed any obstacle to the execution of the Contract of May 17, 1843 ?

A. Not that I am aware of.

Mr. R. Would you be likely to know if he had ?

A. I think I should. He has conversed very freely on the subject.

Mr. R. Do you know, sir, whether Messrs. Ladd & Co., through Mr. Brinsmade or any one else, has receded from the Contract of 17th May, 1843 ?

A. I don't know that they have in full. It was implied in the letter of October 18, 1844, (see Appendix) that Mr. Brinsmade was negotiating with other parties ; and furthermore, with one exception mentioned in that letter, that he expressed the determination of having no further negotiations with Belgium.

Mr. R. Had Messrs. Ladd & Co. the power and right of recession, within a certain time, by the Contract ?

A. I understood it so, after a certain time.

Mr. R. Do you or did you consider a recession on their part to release the King from any act of yours ?

A. It is a question how far he could be released, and it is a question how far he was bound. If he *were* under obligation to ratify, he would be certainly released from it.

Mr. R. I beg leave here, gentlemen, to file again the letter of October 18, 1844, in evidence of this fact. [See Doc. M. in the Appendix.]

I wish now, Mr. Richards, to carry you back anterior to the Belgian Contract. Do you consider Mr. Brinsmade to have fulfilled the considerations for which the Contract of 24th November, 1841, was given ?

A. The consideration was a very indefinite one. There were considerations mentioned verbally, but he never gave any written pledge, whatever it was. I do not consider he had fulfilled it.

Mr. R. Recite the motives that led to the contract of November, 1841, and the conversation that occurred regarding it, before it was made.

A. I believe I have mentioned them: the design was as I understood it, essentially the same as the lease at Koloa. I considered it an object to Ladd & Co. to secure a lease, but the objection offered was the uncertain state of the Government, and before it could be done, the recognition of Independence was necessary.

Mr. R. Did you understand that the recognition to be obtained by Mr. Brinsmade was to be any part of the consideration ?

A. As far as a general understanding went ; he pledged himself that it should not go into effect until the Independence of the Sandwich Islands was secured, and gave a written promise to that effect.

Mr. R. When did Mr. Brinsmade give that promise.

A. Not until after the lease was signed by the King at Maui.

Mr. R. Did Mr. Brinsmade at that time impress the King with the belief that he could secure the independence.

A. He did, and seemed to rely on the King's letters to the President of the United States, and the Governments of France and England.

Mr. R. Were there urgent political motives to make the King desirous to have this done?

A. There were. There were numerous charges against the Government, but the Government knew little about what they were except those I have mentioned before.

Mr. R. What had the King to dread from those causes?

A. The threats which he had heard, made him anxious. It was publicly known that Charlton made threats and intimidations, and it was seen that there were important conflicting interests, suits of many thousand dollars, &c.

Mr. R. Do you believe that the King would have been induced to give such a lease, but for motives of that sort, and the belief that Mr. Brinsmade could obtain the independence and relieve him from those fears?

A. I think could there have been a recognition previously, the King would have been glad to have introduced more foreigners to carry out his plans. The form was in compliance with Mr. Brinsmade's wishes, the King putting confidence in him.

Mr. R. What has Mr. Brinsmade effected in the United States, France or Great Britain, for the King, to the end of recognition?

A. He delivered the letters which were given him. I heard from him, Mr. Brinsmade, that he had conversed with Mr. Webster, Mr. Addington and Mr. Guizot, but could not learn from Mr. Webster that he had done any more than to deliver letters and receive promises of kind feelings.

Mr. R. Did you ever hear from Lord Aberdeen, Mr. Addington, or Mr. Guizot, that they had conversed with Mr. Brinsmade himself?

A. I did not. I never learned from them that any conversation had taken place.

Mr. R. I want to introduce in evidence a letter which I have here, dated 31st December, 1842. [See Appendix, document N.] I introduce it to show the cordiality of feelings, and to show that before any recognition had taken place, Mr. Brinsmade had made the broad assertion that he expected to realize the objects of his business. What impression was made on your mind by the letter?

A. I felt anxiety, and feared that the object of recognition had been lost sight of by Mr. Brinsmade; that he had presented the letters, and not meeting with success was about selling the contract without the object being secured. I went so far as to consult a lawyer, Mr. Mayer, though not in a formal manner, whether, the promise

being on a separate piece of paper, and not on the lease, whether Government would be bound to a third party.

Mr. R. Please give a full and succinct account of the way in which the recognition was effected, and by whom?

A. On my arrival in Washington, I saw Mr. Webster in December, 1842, and proposed the object. I was disappointed, and my fears considerably awakened by the coldness with which he received me. I visited a number of persons who had influence with Mr. Webster, and endeavored to awaken interest on the subject. After calling several times at the Foreign Office without being able to have much conversation with Mr. Webster, although I called by appointment, I at length called at his house in the evening. There I had a conversation of twenty or thirty minutes, in which he was particular in inquiring about the Sandwich Islands, their trade, commerce with other nations, &c., &c. It was then agreed that we should write him a formal letter, and some of the points were mentioned. The letter was written and subsequently published. After waiting nine days, we called, and could not ascertain that he had read the letter. We were that day introduced to the President, and members of the Cabinet; had a long conversation about the state of the Islands and the object of our embassy. We were questioned particularly of our views as to the rights of Great Britain in the Sandwich Islands, and as to the course we should pursue in case the United States did not acknowledge the independence. The same afternoon we received a note from Mr. Webster, requesting us to call. Mr. Cushing was present. The subject was essentially the same as at the former interview, but the discussion was very much more full. The business was then very shortly after taken up, and after a few more private conversations, or not so full as the first, we received the letter which has been published. I requested a letter of introduction to Mr. Everett, and the American Minister in Paris. Mr. Webster declined giving one to the latter, but gave one to the former—a private letter. We then went to England, and early sought an interview with Lord Aberdeen, when I proposed the subject of independence.—His Lordship smiled, and said it would be ridiculous,—that it was not to be supposed that they were independent. The differences between the Sandwich Islands Government and the British agent here, were discussed at some length, after which we returned, and wrote his Lordship a letter of a similar character as the one we wrote to Mr. Webster. We then obtained letters of introduction to Mr. Guizot, the King of Belgium, and several persons of influence in France.

We went on to Paris, taking Belgium in our way, as I mentioned the other day. In procuring an interview with Guizot, we stated to him the definite objects of our mission, one of which was the recog-

niton of independence. He replied that as to that point he had no objection. The conversation in other respects was pleasant.

We returned to London and made known at the Foreign Office what had been done in France. Sir George Simpson was sent for several times to the Foreign Office, and inquired of very particularly, as he told me, as to the truth of the facts stated in our letters, and other particulars in relation to the Government of the Islands. At the second or third interview he told me he thought they would comply with our request, and a few days afterward, we received the recognition by England, which has been published. We then shortly after returned to France, and commenced negotiations, but found unexpected delays, continued from week to week, and month to month, till eventually the news of the occupation of the Islands by Lord Paulet was received. This put a stop to all further negotiations till near the end of October, 1843, when we again returned to France, and after a somewhat protracted correspondence, I think either in the month of December or about the 4th of January, we received the announcement that France had acknowledged the independence. The mutual guarantee which had been signed was not received then, but some time after.

Mr. R. I wish now, Mr. Richards, to get at the motives which actuated England in the recognition of independence.

A. I always supposed, from my intercourse with the British Government, that they had an apprehension that unless they gave the recognition the islands would be exposed to seizure by some other nation.

Mr. R. Were they not apprized of the promises made to you in France?

A. They were, and they seemed to produce a good effect.

Mr. R. Did you learn the agency of Mr. Brinsmade in procuring the recognition?

A. I had an interview with Leopold, Sir George Simpson and myself. That interview I probably should never have had, had it not been for Mr. Brinsmade. He was the agent who introduced us to Count Hompesch. The fact that there was so much delay, and that we never could hear any thing, led me to suppose that the King of Belgium had never taken any steps to procure the recognition.

Mr. R. Did you ever use the letters to the King of Belgium?

A. Sir George Simpson had letters, and might have used them: they were delivered by Sir George.

Mr. R. Was that all the aid he gave you?

A. I do not know of any other way in which I was aided by him.

Mr. R. Did you learn of Mr. Brinsmade, in Paris, that he had used any influence there, or did you hear him mentioned in London?

A. I have no recollection of it, not in connection with any diplomatic business. I never heard his name mentioned officially.

Mr. R. Was this interview with the King of Belgium before your first visit to France ?

A. It was.

Mr. R. I want you to go back again to state what was the main and ostensible object of Mr. Brinsmade's visit to England in 1842 ?

A. I am unable to state Mr. Brinsmade's object in going to Europe: he promised to deliver letters.

Mr. R. Had he private business of his own ?

A. I learned afterwards that he had.

Mr. R. I want you to go back to the occasion of his depression of spirits ; perhaps that may explain his objects.

A. He appeared to be low spirited, which I attributed *in part to the death of his wife*.

Mr. R. What did he state of his circumstances, when he said he had property enough to spoil one child ?

A. I have thought strange of the expression, since it seemed to me he must have been aware at the time that he had not property.

Mr. R. Have you reason to believe, Mr. Richards, that the insolvency of his affairs at that day might have had some effect on his spirits ?

A. I have supposed so since—I did not at that time.

Mr. Brinsmade remarked that the question assumed as a fact that which had not been proved, nor did he believe could be proved.

Mr. De Fiennes objects to such questions.

Mr. Ricord said he asked if the insolvency had an effect at that time ?

The Board remarked that the question did not prove a fact, but was only a matter of opinion.

Mr. Ricord says, I will put the question in this shape :

Mr. R. Do you have reason to believe that in 1841, at the time of his low spirits, Mr. Brinsmade possessed property and dues sufficient to liquidate his outstanding debts ?

A. From evidence since come to my knowledge, I do not think the house at that time had property sufficient to cover their debts.

Mr. R. Did you consider Mr. Brinsmade, in Europe, to be a diplomatic co-operator in obtaining the recognition ?

A. I did not.

Mr. R. How was he in Europe ? What were his relations ?

A. He was there in the way I have mentioned, on his own private business ; but that he endeavored nevertheless, and did do what he was able, to secure the independence.

Mr. R. Did he bear letters of credence from the King ?

A. He did not.

Mr. R. Did he express himself gratified at your arrival in Europe ?

A. He did very much so, both by conversation and letter.

Mr. R. Did you gather at any time that he felt himself injured by the King's having sent out an embassy ?

A. By no means ; he never said any thing to me of the kind. I

always supposed, on the contrary, that he considered it very favorable to his interests that I had gone, and that there was no prospect that the independence would have been recognized if we had not gone, and gone just at that time.

Mr. Ricord would again file the letter of 31st December, 1842, in token of Mr. Brinsmade's high gratification at Mr. Richards' embassy. [See Doc. N.—Appendix.]

Mr. R. Was Mr. Brinsmade in the act of negotiating away his alledged contract of 24th November, at the time of your arrival, and before the recognition was obtained ?

A. I have no means of stating, except from Mr. Brinsmade himself. I should think he had received some encouragement. I am unable to say to what extent those negotiations had proceeded.

Mr. R. I would like to file the engagement signed by Ladd & Co. of November 24, 1841, which by the way is null and void, and I have marked it such. [Mr. Ricord here filed Doc. B. 2.—see Appendix.] Please give an explanation of this.

A. That is an instrument sent back to Lahaina from Honolulu after the lease of the same date was signed.

Mr. R. Was that understood at the time to be a virtual undertaking on the part of Ladd & Co. to procure the independence ?

A. The fact that it was not on the lease made me think it a question. Mr. Brinsmade would not undertake it in any formal way: he also declined to take an office under Government to go to Europe.

The Board asked why that was not embodied in the instrument—was it a subsequent thought ?

A. It was thought of at the drawing of the document, and Mr. Brinsmade promised verbally that it should be done, but that it was necessary to consult the partners of the house at Oahu, and he would send it up.

Mr. R. Is the whole instrument in his handwriting ?

A. It appears to be all in one handwriting.

Mr. R. Did the King understand Mr. Brinsmade to undertake to obtain independence ?

A. Mr. Brinsmade would not give any pledge, but said as his own interest was affected he should use all his exertions.

Mr. R. Why was this on a separate piece of paper ?

A. I expected this instrument would have come back on the same document. Mr. Brinsmade had given his pledge and honor that he would attend to the matter. At that very interview the King renewed his request that he would take an appointment, which he declined.

Mr. R. In view of that engagement how do you regard the conduct of Mr. Brinsmade in attempting to convey away the Contract of 1841 in the manner which you mentioned ?

A. As I have mentioned, it caused anxiety, and led me to consult legal advice on the subject.

**Mr. R.** To whom do the rights and interests of Ladd & Co., if any, under the lease of the 24th November, 1841, belong ?

**A.** To the Belgian Company of Colonization.

**Mr. R.** Do you know whether that lease or contract was made out in duplicate ?

**A.** It was.

**Mr. R.** Was it made out to them or to their assigns ?

**A.** I think so.

**Mr. R.** Was one copy given to Ladd & Co. ?

**A.** Both copies were given to Mr. Brinsmade, and he returned one.

**Mr. R.** I will file this one: the lease of 24th November, 1841. [See Doc. B. 1. in the Appendix.] What became of the other ?

**A.** By the Belgian Contract I supposed it to be in the notary's office.

**Mr. R.** Who has the right of selecting the uncultivated and unimproved lands in the Hawaiian Islands since the transfer ?

**A.** I could give only my opinion, that the right belongs to the Company to which that lease is assigned, and in the manner which that assignment declares through the Royal Community of the Sandwich Islands.

**Mr. R.** I want to vary the same question. To whom, since that assignment, is the King liable to fulfill that contract, if it be a contract ?

**A.** To the Belgian Company of Colonization, as specified through the Royal Community of the Sandwich Islands.

**Mr. R.** I will vary it again. Have Ladd & Co. a right, since the assignment, to demand any action under that contract, or the right of selection of lands ?

**A.** I am not a judge in that case. I suppose a contract must be performed by the company to which it was assigned.

**Mr. R.** Do you suppose Ladd & Co. have rights under that agreement ?

**A.** I supposed that Ladd & Co. had conveyed away all their rights to the Belgian Company of Colonization.

**Mr. R.** Do you believe that if the King were to fulfill the contract with Ladd & Co., he would be absolved from performing it with the Belgian Company ?

**A.** I don't know if the King granted the claim of Ladd & Co. how he would be absolved from the Belgian Company for the same.

**Mr. R.** Who is the Director named in the Belgian Contract ?

**A.** I was named as the President of the Board of Directors.

**Mr. R.** What was understood to be the office of President ?

**A.** The whole business was to have been under the control of Directors, and the President was to be the acting agent and his vote to predominate.

Mr. R. Have you at any time since your arrival considered your Presidency to have an existence ?

A. Merely prospective; though, as I said before, I thought I had more right than any one else to act.

Mr. R. Would you have consented to the King's giving up lands to Ladd & Co. ?

A. I think I should have felt bound in honor to remonstrate, had the King been disposed to give up land to any other than the Belgian Company of Colonization.

Mr. R. Do you know if any one had any power to demand the selection of lands on behalf of the Belgian Company of Colonization ?

A. No. I have no reason to suppose so. I never have, nor do I know of any other.

Mr. R. Have you understood, or have you ever learned that Ladd & Co. represented the Belgian Company of Colonization ?

A. I never heard that they did.

Mr. R. What was the consideration, whether in money or otherwise, emanating from the party of the third part towards the party of the second part, for the lands, &c., conveyed.

A. Shares in the Sandwich Islands Community, as specified in the contract, were the remuneration to Ladd & Co. of the second part; and, if profitable, a certain proportion of profits, were the remuneration to the King of the Sandwich Islands, the party of the first part.

Mr. R. Who was to make those considerations available to the party of the second and first part ?

A. The Belgian Company of Colonization. I supposed there was some agreement with Mr. Brinsmade which I did not understand.

Mr. R. Has that consideration been paid to the King of the Sandwich Islands by the party of the third part, or been rendered available ?

A. Not that I am aware of.

Mr. R. I will vary the question. Who do you understand to be liable for their not having been made available to the party of the first and second part ?

A. According to the face of the contract, I suppose that the King of the Sandwich Islands, and Ladd & Co., having made conveyances to the Belgian Company, for which they were to form a community, and they not having formed it, it renders them liable for a breach of contract.

Mr. R. Have you, as Director of the Sandwich Islands Community, ever been instructed by the Belgian Company in regard to any matters connected with carrying into effect their stipulations with the parties of the first and second part ?

A. I have not.

Mr. R. Why have you not as such Director moved in the matter ?



A. I considered that I had no power, the community of which I was to be a Director having never been formed.

Mr. R. Have you ever been obstructed by the King or any officer of his Government in the exercise of your office as Director?

A. I have not.

Mr. R. I want to carry the witness back again to the Contract of November, 1841. What was the understanding between yourself and Mr. Brinsmade at the time of forming the Contract of November, 1841, in respect to native rights, which were to be respected in locating lands?

A. All the rights, the protection of which was guaranteed by the Constitution and laws then recently established, there was a good deal of conversation on the subject. The rights of konahikis or landlords and tenants were both particularly spoken of in conversation between Mr. Brinsmade and myself.

Mr. B. What time do you refer to?

A. Previous to the Contract of 1841.

[Mr. Ricord files Book of Laws. See Appendix, Doc. O.]

Mr. R. Will you be pleased to indicate from these laws the passages to which you and Mr. Brinsmade had reference?

[Mr. Richards reads the clause in the Constitution, page 10, fifth line from the top. See Appendix, Doc. O. 1.]

By the Board. Were these referred to at that time?

A. I don't recollect that any particular portions were referred to. The Contract says Constitution and Laws. I recollect now one point in the Laws that was conversed upon, on the 34th page, near the bottom, was the passage spoken of between us. [See Appendix—Doc. O.]

Mr. R. Please mark the passages referring to the subject that the extracts may be filed.

[Mr. Richards marks several passages.]

I don't recollect how the subject was introduced, but Mr. Brinsmade enquired whether the King would not be embarrassed by the land agents or petty chiefs. I replied that it was possible that they should retard the business for a year and a half, but I did not think they would do it as they would run some risk, and Wailuka was mentioned by way of illustration, which land belongs to the King as landlord if he wished to lease it, but his agent could object for a year and a half.

Mr. R. I would like to ask him one question as to the konohiki, or persons holding lands.

A. There are two kinds, the King himself is a konohiki, and the agent or under agent is also a konohiki. The King could not lease the lands of Kekuanaoa without his consent. Those laws were promulgated at that time. The specific pages of the Laws were not referred to at that time, except by the contract.

Mr. B. wished to ask if the volume of Laws which the witness holds is to be the guide of the arbitrators ?

A. There was no particular section or clause discussed except the one I have mentioned.

Mr. R. How mentioned ?

A. It was mentioned that the konohikis had rights, &c., &c.

Mr. R. What was understood by you and Mr. Brinsmade in making the Contract of 1841, in regard to the localities and lands to be selected from ?

A. It was understood that there should be at least one establishment on each of the islands, and perhaps two on the island of Hawaii. There was some talk of two on the island of Kauai; but, on the whole, as I understood, it was thought that one in addition to the present one would be enough. The particular localities were conversed upon some. Waiavaa on Kauai was mentioned. A place was also mentioned in the interior of the island of Oahu, but not definitely settled: it was somewhere between Eva and Waialua, to which Kekauluohi, the Premier, objected, and proposed at one time to have the reserve put in the lease, but afterwards waived his objections. Hilo on Hawaii was mentioned, but as Mr. Calkin had also received a pledge of a piece of land there it was thought doubtful whether that place would answer. But Mr. Brinsmade thought Mr. Calkin would give up his claim, and it seemed to be the understanding that there would be one there, probably the same pledged to Mr. Calkin. Wailuka on Maui was talked of.

Mr. R. Was Mr. Brinsmade informed that there were but few localities to select from ?

A. The idea was constantly held up that there were but few localities, but encouragement given that as many as mentioned above could be obtained.

Mr. R. For what particular purpose were those localities alluded to ?

A. It was for the purpose of having light and mutual understanding on the subject; they were intended for sugar plantations.

Mr. R. Was it understood that they could take those places if they chose ?

A. I think so. I am not aware that any formal understanding was had.

Mr. R. Who was authorized on the part of the King to make those statements ?

A. I had talked with Mr. Brinsmade in an informal manner, and conversed with the King as a friend. I should not think he had pledged himself in any particular.

Mr. R. Have you since been informed how extensive Messrs. Ladd & Co. pretended their lease to be ?

A. I have no definite information on the subject, except from

reports. The first report I heard was from Mr. Hooper to Dr. Judd, that he considered the lease to be worth \$70,000 to each of the House. This I heard before I left the Islands.

Mr. R. What effect did this report have upon you at that time?

A. I was very much astonished at it.

Mr. R. Had you any idea that they were making so profitable a speculation at the time?

A. I had not.

Mr. R. Did that seem to you like an attempt to extend the meaning of the words of their lease?

A. I immediately re-examined the lease, to see if I could find anything in it so valuable as they considered it.

By the Board. Was that before you left for England?

A. Yes.

Mr. R. Recite sir, if you please any conversations that ensued between yourself and Ladd & Co., in regard to localities.

A. I never had any, except with Mr. Brinsmade.

Mr. R. Did Mr. Brinsmade understand that he was to be restricted in his localities?

A. He understood that he was to have the selection of all unoccupied lands, and I, supposing I knew the mind of King, encouraged him to believe that if those spoken of could not be had, the King would find others.

Mr. R. Was the Belgian Company of Colonization intended to supply the joint stock capital mentioned in the contract of 1841?

A. Yes: I understood it so.

Mr. R. Were the establishments on those localities intended to be conducted in any other way than by a joint stock capital?

A. I believe not.

Mr. R. What consideration has the King received for the contract of 1841?

A. I know of none except so far as I have mentioned, Mr. Brinsmade's exertions to obtain the recognition of independence?

Mr. R. Do you know what pecuniary offers were ever made and accepted by Mr. Brinsmade for Ladd & Co. in view of the privileges in that lease?

A. I know of none formal. I have reason to know that there were negotiations in Belgium before my arrival.

Mr. R. Do you believe Mr. Brinsmade's motives to obtain the compact of 1841 were philanthropic, or interested?

A. I supposed at the time, his feelings were philanthropic.

Mr. R. What do you suppose now?

A. I suppose now that they were philanthropic, but not so much so as I then did.

Mr. R. What real services has Mr. Brinsmade ever rendered to the King and chiefs entitling him and his partners to such favors?

A. He was uniformly kind and honorable in the conduct of his affairs with the Government, particularly as Consul. He exerted a favorable influence in public and private, and was in the confidence of Government at that time.

Mr. R. Did he make them any loans in the shape of money ?

A. I believe he did at one time in 1839.

Mr. R. Was it ever paid ?

A. It has been since paid with interest.

Mr. R. How large a loan ?

A. \$500.

Mr. R. Anything else ? I mean tangible, not sentimental.

A. Nothing special.

Mr. R. Any kind offices as Consul ?

A. He was uniformly kind.

Mr. R. Did he ever intervene with the United States Government ?

A. I always supposed his letters calculated to produce a good effect.

Mr. R. Do you know if the Government of the Hawaiian Islands has ever reciprocated those kind offices, that is with loans of money ?

A. Yes; at the time the \$500 was loaned, the house had 3 or 4000 dollars belonging to Government.

Mr. R. What other loans have they had from Government ?

A. About 1842, about \$13,000.

Mr. R. Under what circumstances ?

A. They requested it, and urged it. The Government consented about the time the report of Mr. Hooper's came, of the lease being worth \$70,000, and the query came to my mind whether they were looking to that contract of lease for means of repaying it.

Mr. R. State the circumstances.

A. The Government had a letter of credit on the Hudson Bay Company, and Mr. Ladd first proposed to take the drafts of the King here, and he furnish money for them in the United States to Mr. Haalilio and myself, as we should need it. The King did not accept that proposition, and then he proposed in a definite form for a loan.

Mr. R. What was his motive ?

A. I do not know the motive or his object : he stated that he was in want of money. He urged the loan strenuously. The Government had serious objections to loaning these funds for various reasons; one was, that it might not be approved by the Hudson Bay Company, in the circumstances under which it was given, which was for the purpose of carrying out the objects of my mission. Mr. Pelly, at Sir George Simpson's order, gave me the letter of credit. Another objection was the fear that it would not be paid by Ladd &

Co. as early as Government wished, being in debt itself. They urged it strongly.

Mr. R. What security was proffered or given.

A. A mortgage on the stone store or the premises in Honolulu was offered and given.

Mr. R. Was it understood that a portion of the money should be paid at an early period?

A. It was. I think six months, as the Government wanted the money, and the other in one and a half years or thereabouts?

Mr. R. Has that money ever been paid?

A. I have no reason to suppose that it has.

Mr. R. Do you not know that a suit was commenced against them by me at the urgent solicitation of the minister of Finance?

A. I believe so.

Mr. R. Do you recollect what obstacles in defence were thrown in the way of the collection of the money by Ladd & Co.?

A. I recollect some objections on account of a jury, and the suit was withdrawn.

Mr. R. Do you recollect if the Belgian Contract was mentioned?

A. I have no recollection of it.

Mr. R. When you speak of the Triad plan what did you mean?

A. A joint guarantee of the independence of the Islands by England, France and the United States, or something of the kind.

Mr. R. Did it bear any allusion to the *Triune* plan of the Belgian Company, Ladd & Co., and the Sandwich Islands Government?

A. Not in my mind; the Belgian Company was never thought of.

Mr. R. Who succeeded you in the administration of the King's affairs when you went to Europe?

A. No one succeeded me, as I had never held any official appointment. Dr. Judd was appointed translator, which I had been, and a member of the Board of Finance, which I had never been.

Mr. R. Who communicated to you in Europe the King's wishes and opinions?

A. Dr. Judd. I received one letter from the King, written by his own hand.

Mr. R. Did you consider Dr. Judd's letters official?

A. There was a marked distinction made in all official letters.

Mr. R. To whom in the Islands did you officially communicate?

A. I communicated both to the King and to Dr. Judd.

Mr. R. How many letters did you communicate to each?

A. I cannot tell; I made it a rule to write once a month, and sometimes twice. The mass of them were addressed to Dr. Judd.

Mr. R. What was the general impression of Dr. Judd's letters to you? were they favorable to the Belgian Contract?

A. There was never anything to favor the negotiation of May 17, 1843.

Mr. R. Were not his letters generally letters of caution ?

A. They were, in relation to general business, not to that particular business.

Mr. R. Was he acquainted with the subject of the Belgian plan so as to be able to caution you ?

A. No; I had never given him any particulars.

Mr. R. In what way did Dr. Judd mention Ladd & Co.'s objection to Bernard's lease ?

A. It was mentioned incidentally by Dr. Judd, that objections had been made. The letter was addressed to Haalilio, who was the konohiki of Bernard's land.

Mr. R. Were official matters common between yourself and Haalilio ?

A. Yes. I always communicated to him any letters. Official letters were addressed to me.

Mr. R. Had Haalilio different instructions from you ?

A. No, sir.

Mr. R. Had Haalilio instructions in regard to the Belgian Contract?

A. Not that I am aware of.

Mr. R. Do you recollect seeing Haalilio's letters to the islands ?

A. I saw very few indeed. He generally wrote and sealed without my seeing them.

Mr. R. Do you recollect any information that he communicated to the Hawaiian Government in regard to the Belgian Contract ?

A. I do not know. I have been told that some remarks of his had been found among his papers, and that he was anxious or afraid, "makau," at the time; and this interpreted a fact which I did not know how to interpret at the time of signature. When I asked Haalilio to sign, he said, "You understand it, sign it, I'll not sign it." I replied, "Do you not approve it?" He said, "I should approve it, perhaps, if I understood it as well as you do." He sat down, and his hand trembled very much, I supposed it illness, and held his hand to steady it while signing.

Mr. R. Was that usual ?

A. No. We had engaged our passage in the Diligence for Paris, and I got some medicine supposing him ill; and I never heard more of it until the King told me he found it among his papers. The idea gathered from that paper was, that he was so afraid that he could not write his name.

Mr. R. Did Haalilio understand the English language ?

A. He did not understand books well—he understood common conversation.

Mr. R. Who was the ostensible agent of the King, yourself; or did you put Haalilio forward ?

A. Where I could, it was my design to put him forward. I was the person who transacted all the business—I took the lead.

Mr. R. Had the fact of a Sandwich Island Chief being with you and associated with you in the embassy, any influence with the parties in the contract ?

A. I suppose it gave weight to our transactions.

Mr. R. When you went to Brussels, was Mr. Brinsmade urgent to have you go there ?

A. I don't know that we made any special objections ; we were glad to be in his company, and it was very little out of the way. We also felt interest in his plans.

Mr. R. Was Mr. Brinsmade urgent and solicitous to have you lend your sanction to his plans with the Belgian Company ?

A. He always did seem anxious, and used arguments to persuade me that the Belgian Contract was a good thing, and dwelt upon the reasons in the very pleasant manner for which he is so remarkable.

Mr. R. Did you hang back ?

A. I don't know that I particularly hung back, except that I was anxious to effect the object of the recognition.

Mr. R. Did he persuade you that the Belgian Contract had a bearing on that object ?

A. He said a good deal to me on the subject, and at one time I thought it had a bearing.

Mr. R. Who bore all the expenses of Mr. Brinsmade in Europe ?

A. He bore them himself. I lent him money, about \$4,000 ; one sum of £400, the other in £50 at a time.

Mr. R. Was this volunteered from you or solicited ?

A. It was solicited.

Mr. R. On what pretext was it solicited ?

Mr. Brinsmade remarked that he had not the least objection to Mr. Ricord's asking questions as to every act and fact of his life, from his residence in the islands in 1833, to the present hour, but he did not see its necessity in this case.

Mr. Ricord said he had but one legal motive, which would be seen in the argument to be of vital importance ; and he disclaimed all intention of hurting Mr. Brinsmade's feelings.

Board adjourned to Wednesday, Sept. 2.

#### EIGHTH DAY.

#### *Cross-examination of Mr. Richards, resumed.*

Mr. R. Was there any obligation on the part of yourself or Government to furnish Mr. Brinsmade with funds abroad in the way in which they were furnished ?

A. There was not.

Mr. R. Have you letters in your possession touching the subject of loans to Mr. Brinsmade ?

A. I am not certain. I believe there is one filed with Judge

Andrews, of the latter part of October or first part of November, 1843. I think the subject may have been mentioned in some other letter.

Mr. R. I would give notice of my intention to produce that letter in evidence. [See Doc. P. in the Appendix.] What amount altogether did you loan Mr. Brinsmade?

A. About \$4,000.

Mr. R. Was it ever repaid?

A. Never to me. I heard that Mr. Ladd had confessed judgment in part.

Mr. R. Was that secured to you or Government?

A. I considered it on the part of Government; indeed I considered the whole on my personal responsibility, as I never had any authorization to make the advances.

Mr. R. You said something of Mr. Brinsmade's having undertaken to invest funds, so loaned, in certain articles for Government. Were they so invested?

A. Not that I am aware of. I said something to Mr. Brinsmade, and gave him a list of articles, some of which were for me and some for Government. I am not aware that they were ever shipped.

Mr. R. Did you ever receive notes from Mr. Brinsmade for the monies so levied?

A. I did. The notes are made payable with interest to Kamehameha III., and are yet in my possession.

Mr. R. Why in your possession?

A. I considered my personal honor pledged for part, though the funds were the King's.

Mr. R. What did you believe was the particular object Mr. Brinsmade had in view in borrowing the money?

A. To prolong his stay in Europe for the promotion of his own objects, though I had no doubt that he would do all to favor the independence of the islands.

Mr. R. Had you a copy of the Belgian Contract when in the United States, or while you were in Europe at any time?

A. I copied one from Mr. Brinsmade's, in March, 1844.

Mr. R. Is that a complete copy?

A. There are some forms left out: my idea was to copy the body.

Mr. R. Have you ever received an official copy for Government?

A. I never have.

Mr. R. Is that the only copy you ever had?

A. Yes, sir, I had another copy made out from that. The copy in your possession is made from mine by a copyist in London.

Mr. R. Is that the only copy which has found its way to the islands?

A. Those two are—they have both been in your hands.

Mr. R. Was the lease of 1841 ever kept from the knowledge of the chiefs?



A. It was not shown them by me : it has never been discussed before them. The object of securing the independence of the islands, and every thing connected with Mr. Brinsmade's going to Europe, was kept a secret from all.

Mr. R. Was there any reason assigned at the time for keeping the knowledge of this lease from the chiefs ?

A. I know of nothing particular in the matter of the lease that should keep it secret. Considerable was said of the importance of keeping secret the subject of independence.

Mr. R. Have you ever heard it suggested that it would be a sore point with the chiefs had they known it ?

A. In reference to claims, and particularly in Hanalei, I heard that if the King were to claim the right to take the lands of the chiefs, there would be a rebellion at once.

Mr. R. Have you had reason to suppose, since your return, that the King felt coldly towards you on account of the contract ?

A. I did suppose, when the papers were found of Haalilio's, that he looked with some jealousy on me.

Mr. R. Had you any personal obligations to Mr. Brinsmade and the Belgian Company about which you conversed with Mr. Hunnewell ?

A. No, sir, I have no personal recollection. I have conversed with Mr. Hunnewell on general particulars. Something published in the newspapers were the grounds which led to our conversation.

Mr. R. I think you said you had observed that the right of recession ought to have been allowed equally to the King as well as to Ladd & Co.

A. I did express something like this. I did not see what justice there was in giving the right to Messrs. Ladd & Co., and not to the King.

Mr. R. Would the right of recession on the part of Ladd & Co., if they exerted it, answer all the obligations on the part of the King ?

A. I suppose so. If the contract was nullified, it would make no difference whom it were by, all parties would be released from the obligation.

Mr. R. You stated something about your interview with Ladd & Co. in 1845, for compromise; please repeat the object.

A. The sole object which I had in view was, to bring about a better state of feeling, and also to promote the interests of Ladd & Co., and bring things into a better state. I acted by no official authority, except that I was countenanced in any attempt to bring about a better state of things, but I was never authorized to act; there was no meeting of the cabinet, except on one point. I believe there was a proposition made, to which there was a formal or informal assent by the cabinet.

Mr. R. By what authority did you act in the offer of compromise ?

A. By no authority. I never did make any offer, but was merely laying the foundation for a compromise.

Mr. R. What was the state of society here when you arrived, which led you to wish to bring about a better state of things?

A. There seemed to me to be a great deal of asperity on the part of Ladd & Co. and others, against Government. I thought this was one of the causes?

Mr. R. Was your motive at any time in your offer based upon the idea that the Government was liable to Ladd & Co.

A. No; except it might be prospectively.

Mr. R. I wish to file and have identified these documents, to show the attempts made by Ladd & Co. to obtain possession of lands, as they call them. These are the original papers. I will have them identified. I file these in evidence of the way in which Ladd & Co. attempted to exercise rights under the lease of November, 1841, which had been sold to the Belgian Company of Colonization, and of the way in which the Government through me repelled such attempts. [See Appendix,—Doc. Q. No. 1 a.]

Mr. R. Have you the papers containing the overtures on your part?

A. I have filed them in.

Mr. R. What were my views at the time as the agent of Government particularly charged with this business, in regard to those overtures.

A. You were pleased with any attempts at conciliation, but opposed to Government's making any specific offers. You wished every thing done that Government could do to favor Ladd & Co., but did not consider the Government under any particular obligation to Ladd & Co. You wished the offers to come from Ladd & Co.

Mr. R. Did I institute any comparison of what the Government had done in the case of the estate of French & Greenway, and what it would do with the estate of Ladd & Co.?

A. You often alluded to it, and said if Ladd & Co. would make a full disclosure of their affairs,—if they would come forward as French & Greenway had done, the Government would be able to render essential service, and you thought it desirable that Government would proceed as far as they could.

Mr. R. What were the results of the proposition made by you to Ladd & Co.?

A. I think I have stated, I never made any definite proposition. Ladd & Co.'s views being so widely different from Government's that I was discouraged. I thought Government as a creditor would come into certain measures, provided the other creditors did the same.

Mr. R. What was the counter propositions of Government, expressed by the cabinet to me?

A. I don't recollect anything. The only thing I recollect was that I understood the views of the cabinet to be, they would come into the measures provided other creditors would do so also.

Mr. R. Was there ever any proposition that a meeting of creditors be convened and a plan proposed to give Ladd & Co. so many years to pay their debts?

A. I recollect a vast variety of conversations on the subject, but nothing definite; as it appeared to me there was a sincere desire to devise some plan for their relief. I am sure I was sincere, and as far as I know, others were also.

Mr. R. Who was the negotiator expressly charged with the affairs of Ladd & Co.?

A. Yourself. I don't recollect the precise date of your appointment, but it was about the period of my return, in April.

Mr. R. Was it ever resolved that the duty of that negotiator should not be interfered with by any other member of the cabinet?

A. There was; about the time of the arrival of Mr. Brinsmade.

Mr. R. What were the motives of passing that resolution in the cabinet?

A. To prevent confusion. One member would not know what another had done, &c.

Mr. R. Were you at the time of conference with Ladd & Co., a member of the executive cabinet, or did you volunteer as a mutual friend?

A. I was a mutual friend. I had no relation to the cabinet.

Mr. R. Were the cabinet desirous as a matter of right or of favor to consider Ladd & Co.'s propositions?

A. As a matter of favor.

Mr. R. What officer of Government referred Ladd & Co. to you for the definite purpose of conciliation?

A. In conversation with Dr. Judd, he expressed a wish to have me use my exertions.

Mr. R. Was this after my appointment as negotiator?

A. I should think not; I should think before. My intercourse with Mr. Ladd was at an earlier period than I thought when I was first questioned.

Mr. R. Upon what condition did the cabinet assent partly to Ladd & Co.'s proposition to you?

A. There never was any proposition formally made. The cabinet expressed readiness to come into an arrangement for the relief of Ladd & Co., provided their other creditors would do so also.

Mr. R. Do you know if the other creditors did come into the proposition?

A. I think Mr. Ladd stated in the letter filed that they did not. [See Appendix,—Doc. I., No. 3.]

Mr. R. Do you consider that proposition obligatory on the cab-

inet to accede to, as that if they did not, it would raise an obligation of indebtedness to Ladd & Co.?

A. I am not aware that there was any kind of obligation on the part of Government, to defer collecting those dues of Ladd & Co.

Mr. R. Do you know if Mr Brinsmade was detained in Europe on account of the Government ?

A. I know of no way whatever, as after I left, there was another agent appointed.

By the Board. Was Mr. Brinsmade to deliver the letters personally ?

A. I think he was to deliver or see them delivered.

Mr. R. Were the letters Mr. Brinsmade was to deliver sealed?

A. Yes.

Mr. R. Do you know the import or tenor of those letters ?

A. I transcribed them ; they were not letters of credence, but proposed the recognition and guarantee.

By the Board. Was there any reference to Mr. Brinsmade in them ?

A. No.

Mr. R. Did they name Mr. Brinsmade as authorized to negotiate?

A. Mr. Brinsmade was not mentioned in them. They were duplicates of letters previously sent. They were *not* on second thought duplicates; these were the first of that particular kind, though essentially the same.

Mr. R. Could they have been sent with equal propriety by the Captain of a vessel ?

A. The duplicates were sent by Sir George Simpson, but never delivered. We had had some doubts if the former letters had ever reached their destination.

Mr. R. Who were the previous ones sent by ?

A. Letters of the same purport were sent by T. J. Farnham, on the business of securing the independence and joint guarantee, he, Mr. Farnham, had conditionally letters of credence and instructions; Mr. Brinsmade had no letters; Mr. Brinsmade declined taking letters of credence.

By the Board. Were those letters given to Mr. Brinsmade after he had concluded to go, or given as part inducement that he should leave.

A. They were given him in connection with the plan of the lease, &c. He expressed his determination to go to the United States, and thought if the King wrote clearly and fully that the letters would have a good effect.

Mr. R. Do you consider your act in signing the Belgian Contract to have been the acknowledgement of the Government of the Hawaiian Islands ?

A. I did not consider it the acknowledgement in any such sense

as to prevent the necessity of ratification; But expressed the opinion that they would ratify it.

By the Board. Was it understood by the parties to the contract of May 17, 1843, that the ratification of the King would be necessary?

A. I think it was.

Mr. R. I intend to introduce the negotiations of General Miller, to show that the Government of Great Britain considered the ratification of the King necessary even to acts that were expressly confided to Mr. Richards.

Mr. R. Do you consider by the whole current of the King's official acts and conversation with you, that the King has approved of the contract of 1843?

A. I am sure that he has done nothing to approve, and that he has manifested a good deal of anxiety on the subject.

Mr. R. Was not the King in ignorance of the nature of the Belgian Contract at the time of your return and report?

A. He was until my verbal report. I never made any written report. I reported it to him as a thing at an end. He manifested anxiety before he received my report.

By the Board. Was it the current rumors that made him anxious?

A. Yes; he heard the reports.

Mr. R. What reports in regard to the Belgian Contract so called, were in circulation on your arrival?

A. That a large company of emigrants was coming out here to take possession of unoccupied lands. A very considerable portion of our conversation however turned on the original contract of 1841, the time of which had not then expired.

Mr. R. Who was the mover of the reports about in this community?

A. I don't know of any particular individual.

Mr. R. Did you state to the King what became of that lease?

A. I presume I did not state definitely what had become of the lease. I thought probably Mr. Brinsmade might have procured it from the notary.

Mr. R. To whom did it at that time belong?

A. It appears from evidence given here, that it has not been taken. I suppose it to be the property of the Belgian Company.

Mr. R. Where do you suppose it to be now?

A. I suppose it be with the Belgian Company of Colonization, as their property; on the 17th of May, 1843, it was given them to be used in the way prescribed in the Belgian Contract.

Mr. R. Did you learn in Belgium of the necessity of their leaving the contract in the office of the notary, according to the laws of Belgium?

A. I did understand that, I do not know how, unless in conversation with Messrs. De Fiennes and Brinsmade.

Mr. R. Was the lease an assignable instrument, was it made out to them and their assigns?

A. I think it was; I am unable to state definitely what the words of the instrument are.

Mr. R. You stated something about a resolution of Government to postpone action on lands until your return, what was the reason?

A. I don't know. I received a copy of the resolution. It was for two reasons, in my own mind; they wished to wait till the independence was established, and to see what was done with the leases to Ladd & Co.

Mr. R. Who would be most likely to know the reasons?

A. I suppose Dr. Judd would know; I suppose the King would know.

Mr. R. You have stated the names of persons in Belgium, furnished to Mr. Jarves. Do you know that communications have been sent?

A. I do not.

Mr. R. Had papers and printed pamphlets been sent by Mr. Jarves to those gentlemen, would it have been an act of the King, invidious towards Ladd & Co.?

A. I don't think it would. I gave Mr. Jarves, in conversation, the names of gentlemen in Belgium, and other places, without reference to Ladd & Co.

Mr. R. Did you furnish the names to Mr. Jarves for the purpose of sending general publications, or for the particular purpose of sending pamphlets injurious to Ladd & Co.?

A. I do not recollect that I thought of Ladd & Co. when I gave the names.

Mr. R. Have you been the medium of submitting new laws to the Legislature?

A. I suppose I have. I have translated the whole and read them. I have translated them into Hawaiian. I think there have been none passed that I did not read. I never heard or suspected that any reference was had to Ladd & Co. in framing new laws.

Mr. R. Would you have been likely to know if any provision of the laws were meant to apply expressly to Ladd & Co.'s affairs?

A. I think I should, I often heard discussions on the subject.

Mr. R. I refer to the laws framed since your return from Europe.

Mr. R. For the present I will terminate the cross-examination of Mr. Richards.

Mr. Ricord stated that should the opposite party recall the witness in capite, he, Mr. Ricord, claimed the right of further cross-examination.

Mr. Brinsmade. I feel the necessity of resuming the examination

of Mr. Richards, as in the cross-examination new points have been touched upon, and in pursuing these farther examinations, I might get on ground already gone over in my former enquiries.

*P. A. Brinsmade re-examines.*

**Mr. B.** In stating the origin of the power of attorney with which you went to Europe, you spoke of T. J. Farnham. Who was T. J. Farnham?

**A.** Thomas J. Farnham was an attorney, I think from Illinois, but has resided in the State of New York.

**Mr. B.** When was he here, and whence did he come?

**A.** In 1839 and '40. He came through Oregon.

**Mr. B.** Did he bring letters of introduction?

**A.** He brought no letters of introduction to me except at Lahaina, one from yourself.

**Mr. B.** Do you recollect my enclosing the testimonials he brought to me?

**A.** I recollect no enclosures in your letter. My impression was that he had no letters of a very decisive character. I don't know how I got the impression.

**Mr. B.** Were precautions suggested by me in regard to him?

**A.** I recollect no precautions in your letter of introduction for Mr. Farnham. I think I could find the letter.

**Mr. B.** Were any precautions used in granting him powers?

**A.** I used, or rather I suggested, and the King used precautions in giving him powers in relation to his diplomatic powers.

**Mr. B.** Did I suggest to you the necessity of caution?

**A.** I do not recollect your suggesting the necessity of caution. I am sure that there was none at the time of his carrying letters of introduction. My impression was that Mr. Brinsmade thought highly of Mr. Farnham. I think there was something in a letter the second time he came up. I think you said he had showed to you letters to some officers of the United States Government, as evidence that he was a man of some standing.

**Mr. B.** Did I not inform you in what relation I felt obliged to place myself with Mr. Farnham?

**A.** I don't recollect any thing definite.

**Mr. B.** Did I not inform you that it was understood between me and Mr. Farnham that I must treat him as if he might turn out to be the greatest blackleg that ever came over the Rocky Mountains?

**A.** I do recollect something of that kind after he had obtained the confidence of the King.

**Mr. B.** Was it not in reference to his intellectual abilities, rather than his integrity, that I expressed confidence?

**A.** My opinion was that you expressed confidence both in his intellectual abilities and integrity.

Mr. B. Did that remark of mine indicate great confidence in Mr. Farnham's integrity ?

A. I don't recollect the connection between your remark and your confidence. I can refer to the letter, but am perfectly certain that most of the confidence we had in him arose from your house.

Mr. B. Were not the cautions from the same source ?

A. I don't recollect any cautions, though if there were any they must have been of such a character as not to overbalance the confidence we had from you. I have no recollection of any line being drawn between his integrity and his talents, though there may have been.

Mr. B. What precautions were used ?

A. The power of attorney was given him without any precaution whatever. The diplomatic powers were sent to a third person in the United States to receive evidence of his character and give them at his discretion.

Mr. B. To whom were the papers transmitted ?

A. The papers of diplomacy were committed to yourself or your house, and one to Mr. Chamberlain, who carried them to Mazatlan, and they were there committed to one of the party about to proceed across Mexico.

Mr. B. To which one ?

A. To Mr. Marshall.

Mr. B. Was it not suggested by me that the interest involved would authorize some risk ?

A. I should think you expressed the idea that the interests involved would warrant some risk.

Mr. B. Did I not write to them to that effect ?

A. I am unwilling to state definitely if you wrote to me, because I cannot state definite expressions. The idea is familiar to me, whether suggested by you or other persons at the time.

Mr. B. Were the papers necessary to authorize Mr. Farnham as a diplomatic agent or as an attorney, ever delivered him ?

A. The papers were delivered to him in the United States.

Mr. B. Were they ever used by him ?

A. They were never used by him that I am aware of.

Mr. B. Do you know why ?

A. I do.

Mr. B. State your reasons.

A. I don't wish to state why he did not use them, I have objections to answer that question.

The Board objected to any questions being put that would implicate private character in any way irrelevant to the matter in dispute.

Mr. B. Do you not know that it was Mr. Farnham's intention to use his powers of attorney in any negotiation for leasing lands or disposing of leases ?



A. I do not know that it was. I have no reason to suppose so.

Mr. B. Did you see him in the United States ?

A. I did.

Mr. B. You have stated that a delay in my movements was occasioned by an engagement that the execution of the Belgian Contract should be suspended till France had recognized the independence of the islands. Between what parties was that engagement taken ?

A. The engagement was taken between Mr. Brinsmade, myself, and the Belgian Company.

Mr. B. By whom was it required ?

A. It was required by myself and Mr. Haalilio.

Mr. B. Have you a copy of that engagement ?

A. I have not in my hands a copy of that engagement : it is in the Government archives.

Mr. Ricord. I will furnish a copy. [See Appendix—Doc. R.]

Mr. B. Was a similar engagement required of me previous to my departure ?

A. It was: that was the distinct engagement, and something more was required.

Mr. B. What more ?

A. That England and the United States, as well as France, should recognize the independence, and give a joint guarantee. Those were mentioned in the conversation at Lahaina.

[J. R. That engagement has been filed in. See Appendix—Doc. B. 2.]

Mr. B. Did you take the original of that engagement to Europe ?

A. I did not take the original of your engagement with the Government with me.

Mr. B. Did you find up to the time of your arrival in Europe, that I had respected that engagement ?

A. I know of no direct evidence that you had violated it up to the time of my arrival in Europe.

Mr. B. Did you find that I had sold the contract ?

A. I did not find that you had sold the contract, I had no reason to suppose so.

Mr. B. Do you not know that I had not sold it ?

A. I do. I never saw the contract after I got to Europe.

Mr. B. Did you not see the Contract of 1841 at the office of a notary, and there certify it to be true ?

A. I do not know if I did: I should be afraid to say that I did.

Mr. B. Do you remember the time of your first arrival in Belgium ?

A. I arrived in Belgium about the 14th of March, 1843.

Mr. B. How soon after your arrival was you presented to Count Hompesch ?

A. I was presented to Count de Hompesch very soon after my

arrival in Belgium—three or four days. I believe I arrived Friday and was presented on Saturday.

Mr. B. Were you not put in communication with him immediately, in reference to propositions that had been made to me ?

A. I was.

Mr. B. Were the propositions which had been made to me from another source, submitted to you and Sir George Simpson ?

A. They were ; but of a very indefinite character, as were also these.

Mr. B. Did you learn to your satisfaction that those other parties who had proposed to me were in accord with the King of the Belgians ?

A. I understood from you that there were, and that there was a knowledge on the part of the King of the Belgians.

Mr. B. Were not those overtures explicitly explained to you by Mr. Bourson ?

A. I cannot say who it was. I should not have thought of Mr. Bourson if you had not mentioned him. I should be unable to say that I recollect seeing Mr. Bourson on Saturday evening, &c. I could not state definitely.

Mr. B. Were there not two distinct arrangements proposed to you and Sir George Simpson for your advice ?

A. There were two distinct parties or classes of persons with whom Mr. Brinsmade had had some conversation and some understanding ; that is clear in my recollection.

Mr. B. Did Mr. Bourson manifest any anxiety for you to entertain his propositions ?

A. He seemed interested, but which proposition he advocated most I don't know.

Mr. B. Did you not find Mr. Bourson at variance with the Belgian Company ?

A. I could not say I did : don't remember.

Mr. B. To which of those overtures did you and Sir George give the preference ?

A. I think to the Belgian Company of Colonization, from the fact that we signed the contract with that company.

Mr. B. Did Count de Hompesch adduce as a reason for your treating with him, that he was personally intimate with the King of the Belgians ?

A. I am unable to state the definite fact.

Mr. Brinsmade said : I wish to carry you back to the scenes of Saturday evening. Did not Count de Hompesch state explicitly that he was on terms of intimacy with the King, and could approach him at any time ? Did he not say so ?

A. I do know that he considered himself so, and conveyed the idea to me of intimate personal relations with the King of the Belgians.

Mr. B. What letters to the King of the Belgians did Sir George Simpson carry ?

A. I think Sir George carried two letters to the King of the Belgians. I think one was from the Foreign Office in London, and I think one from Mrs. Frye.

Mr. B. Was not the one from the Foreign Office to the British Embassy ?

A. He carried one from the Foreign Office to the British Embassy.

Mr. B. Was not the only one to the King of the Belgians from Madam Frye ?

A. I do not know. He said he had a number of letters, and mentioned one from Mrs. Frye, and I think one from the Foreign Office.

Mr. B. Through whom was the letter from Mrs. Frye transmitted to the King.

A. The letter of Madam Frye was transmitted to the King, *I think*, through Count de Hompesch, but don't know ; it may have been through the British Embassy.

Mr. B. Was the arrangement for an interview with the King made by Count Hompesch ?

A. I supposed the arrangements for an interview with the King of the Belgians was made through Count de Hompesch.

Mr. B. Did he not convey you there in his own carriage ?

A. He did.

Mr. B. Where did you dine that day ?

A. I think we dined with him on that day.

Mr. B. What individuals were present ?

A. There were present Sir George, Haalilio, yourself, Mr. Binckum, and a few other persons whose names I don't recollect.

Mr. B. Was Mr. Obert there ?

A. I am not certain if Mr. Obert was there—I should think probable.

Mr. B. Was the general topic of conversation the proposition made to me ?

A. The subject of the arrangement proposed to Mr. Brinsmade, and the recognition of independence, were the topics of conversation.

Mr. B. What was said to Count de Hompesch of the price which Mr. Brinsmade had asked ?

A. Count de Hompesch enquired of Sir George and myself as to the value of the properties and privileges which you had proposed to convey. I am unable to state what was said to him of the value of Mr. Brinsmade's properties.

Mr. B. On the earliest enquiry, what was the opinion expressed ?

A. I recollect on *one* evening that we expressed the opinion that we doubted whether it was worth so much as you asked.

Mr. B. Was there not some proposition at which you and Sir George took umbrage?

A. There was a suggestion made to Sir George at which he took umbrage—at which we both took umbrage.

Mr. B. What was that proposition?

A. It was to enter into direct negotiations with Sir George, Haalibo and myself, instead of direct negotiations with Mr. Brinsmade, with which proposition we expressed dissatisfaction, Sir George particularly.

Mr. B. What was Sir George Simpson's prompt reply?

A. The reply of Sir George in substance was, he would have nothing to do with any such thing, and had no power.

Mr. B. Did he not say that he could not?

A. He did.

Mr. B. What were the reasons given?

A. There were two reasons mentioned: that there was no land to dispose of, and that he had no powers.

Mr. B. Was the reason given by Sir George that the King had assigned all disposable lands to Mr. Brinsmade?

A. I think not; I think there was nothing from the lips of Sir George on that particular point.

Mr. B. What was your reply?

A. My reply was, that there was nothing of lands in the hands of Government to convey independent of Mr. Brinsmade.

Mr. B. Was not that remark subsequent to a similar one from Sir George Simpson?

A. I think not. I am sure that Sir George had never seen any contract up to that time, and therefore could not have made the remark before me.

Mr. B. Are you prepared to say positively that Sir George had never seen a copy of the contract of 1841?

A. I don't know who had shown him the contract; it had not been shown him by me. We had talked on the general subject, but I think he had not seen the contract.

Mr. B. Were any testimonials required or given as to the character of the house of Ladd & Co., or any member of that house?

A. At that interview, I am unable to say whether testimonials were asked or given as to the character and standing of Ladd & Co.

Mr. B. What was the testimony given by Sir George in relation to Mr. Hooper?

A. He spoke of him as a gentleman and a good business man.

Mr. B. Did Count De Hompesch give you any assurances of aid in behalf of your objects in France and England?

A. Count De Hompesch gave general encouragement that he would assist the negotiations in France and England, but nothing specific that I could hold on to.

Mr. B. Did Sir George sign the preliminary terms of the Belgian Contract before his departure for Paris ?

A. I should say no.

Mr. B. What did he sign ?

A. Sir George Simpson signed a paper in relation to the subject, which had many of the preliminary terms of the Belgian Contract in it.

Mr. B. What arrangement was made for drafting the contract from those preliminaries ?

A. I think you were to attend to the subject of extending the preliminaries into a definite compact, and come over to London as soon as it was done.

Mr. B. Do you recollect the first interview with Count De Hompesch, very early after our arrival, and was the price of Ladd & Co.'s conveyances discussed ?

A. I do recollect it ; the price of Ladd & Co.'s conveyances was then discussed.

Mr. B. Who made the proposal in regard to the price to Count Hompesch ?

A. I supposed you made the proposal to Count De Hompesch regarding the price.

Mr. B. In what form ?

A. The first sum, \$250,000, I think in shares.

Mr. B. What sum was then proposed by Sir George Simpson to Count De Hompesch in cash, in lieu of shares ?

A. I don't know that Sir George proposed any definite sum.—Count De Hompesch inquired of us an opinion of the value of Ladd & Co.'s properties: we hesitated, and then I think Count De Hompesch proposed to reduce the amount to \$200,000, and I think Sir George asked if they would be willing to pay that sum in cash.

Mr. B. Do you recollect the conversation while riding in the cab the next morning after dining with Count De Hompesch ?

A. I recollect the next morning after dining with Count De Hompesch, riding out with Sir George to make a call. I think it was after the dissatisfaction expressed by Sir George at the proposition of Count De Hompesch. I think I recollect that you said in the cab, to Sir George, that if he thought best to propose that, he could do so; but I do not recollect whether he did or not.

Mr. B. After you had taken the engagement referred to with the Belgian Company, and before you proceeded to Paris, what had you been told had been done by the King and Queen of the Belgians to further the recognition of the independence of the Islands by France ?

A. I recollect being told by yourself that the King and Queen of the Belgians would write to the King of France, but have never had direct evidence that any letter was written.

Mr. B. Did not *Count De Hompesch* tell you that ?

A. I don't recollect that Count De Hompesch told me ; I did expect him to write.

Mr. B. Had you ever been in Paris before your visit after leaving Brussels ?

A. I had not.

Mr. B. Did you proceed from Brussels to Paris ?

A. I proceeded directly from Brussels to Paris.

Mr. B. How long were you in Paris before you obtained audience with Mr. Guizot ?

A. Thirty-six hours.

Mr. B. How long were you with Mr. Guizot at your first interview with him, before he declared his willingness to acknowledge the independence of the Islands ?

A. Mr. Guizot, on our presenting our request, declared immediately, that he was ready to acknowledge the independence.

Mr. B. Did you have any other interview with Mr. Guizot before leaving Paris ?

A. I had no subsequent interview at that visit to Paris ; I left next day.

Mr. B. Did you, on your return to London, in your first communication to Lord Aberdeen, make use of the promise accorded you by Mr. Guizot ?

A. I did, and gave him an account of our proceedings with Mr. Guizot ?

Mr. B. In the letter which you received from Lord Aberdeen, acknowledging the independence, was there any reference to the promises of France, as influencing the British Government ?

A. Not that I recollect.

Mr. B. How long did you remain in London after the announcement from Lord Aberdeen ?

A. About a week.

Mr. B. At the subsequent interview between Sir George and Lord Aberdeen, what special objection did Sir George labor to remove ?

A. Sir George had many interviews at the foreign office. The impression was that British subjects could not get justice, that Americans were favored, and missionaries did not favor British interests, also the various points which we had brought up in our letter.

Mr. B. In your first interview with Lord Aberdeen, under what rule did he say he considered the Islands ?

A. Lord Aberdeen said that virtually the United States had rule through the missionaries ; this was at the time he said the recognition would be perfectly ridiculous.

Mr. B. Why did you remain in London after receiving the letter of Lord Aberdeen, of April 1st, 1843 ?

A. For the purpose of getting the copy of the document called a Belgian Contract, from the lawyer in London ?

Mr. B. Why did you wish it drafted by a London lawyer ?

A. It was desired that that document might be drafted by a London lawyer, so that it might be clear and intelligible ; Sir George commended that course.

Mr. B. Who paid the expenses of that draft ?

A. I paid the expenses.

Mr. B. Were you reimbursed in that expense by the Hawaiian Government ?

A. I was repaid by Government.

Mr. B. To what place did you proceed from London ?

A. From London I proceeded to Brussels.

Mr. B. For what purpose ?

A. For the purpose of completing that contract.

Mr. B. Was the draft completed during that visit ?

A. The draft was not perfectly completed during that visit.

Mr. B. Did you co-operate throughout in drafting the Belgian contract ?

A. I did.

Mr. B. Where did you go from Brussels ?

A. From Brussels I went to Paris.

Mr. B. While there at that time in Paris, was you visited by me ?

A. I was.

Mr. B. In what month ?

A. In the last of April or first of May.

Mr. B. How long had you been there when I arrived ?

A. Several days.

Mr. B. Had you received any communication from Mr. Guizot to the time of my arrival ?

A. I think I had received no communication from Mr. Guizot previously to your arrival.

Mr. B. Had you addressed him any other letters than to apprise him of your arrival ?

A. I had not, except to apprise him of our arrival, and to request fulfilment of his previous promises.

Mr. B. Did you address him your first long communication while you was in Paris at that time ?

A. I did.

Mr. B. Who drafted, copied, sealed, superscribed and delivered that letter ?

A. I drafted ; Mr. Brinsmade copied and suggested two or three sentences which were incorporated in it ; and I am not certain if Calilio and I delivered it.

Mr. B. Was not the main argument of that letter drawn out by me ?

A. It was drawn up by me; but was submitted to others before your arrival, and was in the hands of the Grand Pierre.

Mr. B. Was not the defence of the Hawaiian Government, against the charges of persecuting the Catholics, made out by me?

A. It was not. I think I can show the particular sentences made by you, by the documents; but think they should not be made public. I am unable to state the particular part which you inserted.

Mr. B. What was the main argument of that letter?

A. I do not recollect, positively: it was something like this. It being the object of the Hawaiian Government to establish a firm and independent Government, it was necessary in doing so that they should cut off the possibility of a return to idolatry.

Mr. B. Was it not this: To show that two systems of religious faith so diametrically opposed as Protestantism and Catholicism, could not be tolerated together without danger of dividing the Government?

A. That idea was in the letter; but the main part was historical.

Mr. B. Was there at that time any gentlemen from Brussels who endeavored to favor you?

A. While I was in Paris there were several from Brussels endeavoring to favor my objects: how far I have no means of knowing.

Mr. B. Did you ever express the fear that your former notes to Mr. Guizot had not been delivered?

A. I am not certain.

Mr. B. Did not Mr. Obert exert his good offices through Mr. Guizot's private secretary?

A. He did.

Mr. B. Did he not introduce you to persons of distinction, with the view of facilitating your approach to Mr. Guizot?

A. He did.

Mr. B. At what time did you leave Paris?

A. I left Paris about the 14th of May: after your visit.

Mr. B. Where did you proceed?

A. To Brussels.

Mr. B. For what purpose?

A. I went to Brussels to complete the Belgian Contract.

Mr. B. By what conveyance?

A. I went from Paris to Brussels in the Diligence?

Mr. B. Was you out through the night.

A. I was.

Mr. B. You will then correct your recollections, as you stated in the first examination that you were on your way from London to Paris when you signed the contract.

J. Ricord. I wish it may be noted, if the gentleman wishes to impeach his own witness.

Mr. B. I utterly disclaim any other intention than to correct Mr. Richards' memory.



**Mr. B.** Did you engage your return passage before you left the Diligence office ?

**A.** I did.

**Mr. B.** How long was your return deferred ?

**A.** We had to defer our passage twice, and had to pay it twice. I don't recollect the number of days we were delayed.

**Mr. B.** How much of the night of the 16th and 17th was Haalilio engaged with you in reading over that contract ?

**A.** I don't recollect how much of the night Haalilio was up. I recollect I was up the whole of one night, and he might have been.

**Mr. B.** Was Haalilio not up on the same occupation by candle-light next morning ?

**A.** He was, I think, engaged in reading the final draft previous to signing.

**Mr. B.** Were we not at the notary's office as soon as it was light ?

**A.** We were there very early in the morning.

**Mr. B.** Were we not all obliged to sit there and hear that Belgian contract read in English and French before signing, and all the documents ?

**A.** We were.

**Mr. B.** Did you proceed immediately from the notary's office to the Diligence ?

**A.** We did, as we had engaged passage for the third time.

**Mr. B.** Did not Haalilio complain of illness when he was in Brussels ?

**A.** I don't recollect it on that occasion. He was not so ill but that he was up through the night reading the contract.

**Mr. B.** How long did you remain in Paris, after your return on this occasion, before you received intelligence of the proceedings at the islands in consequence of the acts of Lord Paulet ?

**A.** About a fortnight. I received the news May 31, 1843.

**Mr. B.** Had France at that time recognized the independence of the islands ?

**A.** She had not.

**Mr. B.** Did that intelligence interrupt your intercourse with Mr. Juizot ?

**A.** It appeared to be that, though he never said so.

**Mr. B.** Where did you then proceed ?

**A.** From Paris to London.

**Mr. B.** Why ?

**A.** In consequence of Mr. Marshall's arrival there with dispatches.

**Mr. B.** Did you write me to join you in London ?

**A.** I did.

**Mr. B.** Did I do so ?

**A.** You did so.

Mr. B. What letters had been written to Lord Aberdeen before my arrival?

A. I am not certain that any letters previous to your arrival had been sent to Lord Aberdeen.

Mr. What was the nature of your first communication?

A. I think the first letter was spreading out the difficulties, and sending a statement from Dr. Judd.

Mr. B. Did you receive any response?

A. I received no early response to that communication.

Mr. B. Who wrote the first letter after that, vindicating the Hawaiian Government from Lord George Paulet's demands and charges?

A. You wrote it. I think there were several documents before us.

Mr. B. What were they?

A. The cases of *Skinner v. Dominis*; *Records of Court in case of Charlton, &c.*

Mr. B. Had not those documents been forwarded to the Foreign Office previously?

A. I think they had; but copies were retained.

Mr. B. What was the nature of the first reply?

A. That letter was first acknowledged through the American Minister, Mr. Everett. I can't recollect the form in which the first reply was made officially. Mr. Marshall saw Mr. Addington. I don't recollect any reply until September 1, 1843.

Mr. B. Was there not something stated to the effect that the matter would be referred back here?

A. We received intimation that the matter would be referred back here, and consulted on the matter.

Mr. B. What advice did your friends in London give you in reference to that reply?

A. I don't recollect the advice at the Hudson Bay House definitely.

Mr. B. Was it not that you had better return here to the islands, and have confidence in the person that would be sent out?

A. I think it was.

Mr. B. Did I urge the writing of another letter?

A. You did.

Mr. B. Did I write it?

A. You did.

Mr. B. Was any material alteration made in my draft of it?

A. No material alteration.

Mr. B. Who made the alteration?

A. The alteration was made, I think, by Mr. Barclay; Mr. Marshall also suggested alterations.

Mr. B. What was the apparent effect of that particular letter?

A. The apparent effect of that letter was good ; it secured the particular object.

Mr. B. Did it call directly for a personal interview ?

A. It did. The messenger brought back a billet from Mr. Addington, requesting a call from Mr. Marshall.

Mr. B. Who went to the Foreign Office in pursuance of that request ?

A. Mr. J. F. B. Marshall.

Mr. B. Do you recollect of any reference to Mr. Brinsmade at that interview ; to me or my affairs ?

A. There was some allusion.

Mr. B. What ?

A. It was stated that you had a "*carte blanche*" from the Sandwich Islands Government for the sale of lands.

Mr; B. How was that charge met ?

A. That charge was met by sending immediately a copy of the contract of 1841, and an explanation was given of the matter at an interview with Mr. Addington.

Mr. B. By whom ?

A. Yourself and Mr. Marshall.

Mr. B. Do you know if that was read and fully explained at the Foreign Office, as to what had been done with it ?

A. I know the contract as Mr. Marshall reported was read, and I am not aware whether it was stated what had been done with it.

Mr. B. Was the vindication of the Government on this matter satisfactory to Mr. Addington ?

A. I understood it to be completely satisfactory for the specific charge.

Mr. B. What assurance did Mr. Marshall report as having been given him at the Foreign Office, in the second interview ?

A. Mr. Marshall reported that the difficulties would be settled in London, instead of being referred back to the Sandwich Islands.

Mr. B. Have you any objection to state in what position that letter placed the British Government in regard to the question that had been submitted—was it in the form of an urgent demand ?

A. I don't recollect. The letter was a very strong one and produced the desired effect.

Mr. B. How long before the decision was given upon the question submitted in the convention of Lord George Paulet ?

A. The decision of the British Government was given on the 20th of September, 1843.

Mr. B. To which of the letters of the commissioners was that response a reply ?

A. It was a reply to the first, but would not have been given in that form but for the second.

Mr. B. How far was that decision favorable to the Hawaiian Government ?

A. That decision was entirely favorable on all points but two, and principally so, on all but one.

Mr. B. What was done to obtain a reversal of the decision on that one point ?

A. Another letter was written.

Mr. B. Who wrote it ?

A. You wrote the main part of that letter.

Mr. B. After the receipt of the response to that letter, did you present to the British Government claims for damages ?

A. I did.

Mr. B. Who drafted that letter ?

A. I think the original draft was by myself, and copied by you.

Mr. B. To whom was the draft submitted ?

A. It was submitted to Mr. Barclay.

Mr. B. To whom was it originally submitted ?

A. I prefer not to answer that question. I think it was entirely in my style.

Mr. B. Whither did you proceed afterwards ?

A. I proceeded afterwards to Paris.

Mr. B. What became of Haalilio in the meantime ?

A. Haalilio staid at London with you. Mr. Marshall had left.

Mr. B. What understanding was had for our joining you in Paris ?

A. You and Haalilio joining us, was to depend on my opinions on my arrival in Paris.

Mr. B. Did you write that you had arranged our accommodations in Paris ?

A. I wrote you informing you where I was staying.

Mr. B. Did Haalilio address a note to Lord Aberdeen before he left for Paris ?

A. He did.

Mr. B. Who wrote it ?

A. You wrote the note. It was merely an inquiry in regard to subjects mentioned before. I think there were two notes signed by Haalilio, one of inquiry, another announcing the proceedings of Admiral Thomas.

Mr. B. When did Haalilio and I join you ?

A. Early in November.

Mr. B. What letters were written to Mr. Guizot after your arrival ?

A. After your arrival, I think there were no letters for some length of time, except mere notes, calling his attention to our business, &c.

Mr. B. After we had taken our residence with you at the Hotel

Meurice, was there not another letter written to the Foreign Office in London, to inquire the state of the negotiations with France ?

A. There was.

Mr. B. Who wrote it ?

A. I think I wrote it, though I think some alterations were made by you with my approbation.

Mr. B. Was not the original draft by me ?

A. If it was written by you I very much misrecollect.

Mr. B. Did you write immediately after to Mr. Guizot, with a view to obtain an announcement that France had recognized the independence ?

A. There was a letter written.

Mr. B. Who wrote that letter ?

A. You did.

Board adjourned to Thursday, Sept. 3.

#### NINTH DAY.

*Re-examination of Mr. Richards by Mr. Brinsmade, continued.*

Mr. B. Was another letter immediately written to Mr. Guizot, requesting the annulment of the Treaty of 1839, and others previously existing ?

A. Yes, sir.

Mr. B. Did I write that letter ?

A. You made the final draft, I wrote a large proportion of it on small slips of paper, and you made the final draft and sent it ; some of which papers I now have ; most of them were destroyed.

Mr. B. Did you not acknowledge me to be the author of that letter to Mr. Ledyard ?

A. I have no recollection of it. I often spoke of you as having made the final draft.

Mr. B. Was there another letter prepared in Paris for Lord Aberdeen ?

A. An outline of a letter was prepared, but not sent as prepared.

Mr. B. Was not that letter signed by Haalilio before he left for Brussels ?

A. The last sheet was signed, but the others were remodeled. I am not certain now if it was sent.

Mr. B. Was there any material alteration in that letter, except on the first page and a half ?

A. There was not any material alteration in the draft that I recollect.

Mr. B. Was there no material alteration ?

A. No.

Mr. B. When did you again visit Belgium ?

A. In about a month—early in March.

Mr. B. Was another letter written after you arrived in Brussels, to Mr. Guizot ?

A. Yes, sir, a mere letter, proposing a question in relation to documents received from the islands, and connected with a conversation with Mr. Guizot's secretary.

Mr. B. Did I not write that letter ?

A. You had something to do with it—can't say positively.

Mr. B. Did I not write the whole of it ?

A. I think not: I cannot say you did not.

Mr. B. By whom were the letters written to Count Goblet ?

A. By yourself—the whole of them.

Mr. B. In what terms, to different friends of mine in the United States, did you express your appreciation of my services.

A. I am unable to mention the terms. The general manner was in terms of kindness, that you had exerted yourself, and been of material aid.

Mr. B. Did you speak of this to the Hon. B. F. Butler ?

A. I have no recollection: I saw him frequently, and conversed freely.

Mr. B. Did you say any thing to him that would authorize him, in letters of introduction to the President of the United States, to say that he had reason to know that I had been chiefly instrumental in obtaining the recognition of independence, &c. in Europe ?

A. I am sure I did not say any thing to authorize any such terms.

Mr. B. Did you in any of your letters to Lord Aberdeen, urge upon him an early decision, because important negotiations in Belgium were injured by delay ?

A. I think I did.

Mr. B. Who was your intermediary with the Foreign Minister at Brussels ?

A. Yourself, indirectly; Mr. Bourson and Count de Hompesch.

Mr. B. Did you encourage Mr. Bourson to expect from you a full copy of the American Almanac ?

A. I said something to you on the subject. I recollect your suggesting it to me, and I did design to do it.

Mr. B. Have you ever written to him since you left Brussels ?

A. No, sir.

Mr. B. Have you in any other form acknowledged his kind offices to you there, than by opening the way to Mr. Jarves for sending him productions of his pen and press ?

A. I have not written to him.

Mr. B. When you left the Sandwich Islands, was it expected that you would exercise general guardianship over all the islands' interests abroad ?

A. As a general question, I should say yes.

Mr. B. Was there not the most perfect harmony of feeling, purpose and interest between us, and in general ?

A. In most transactions there was.

Mr. B. Did you, in virtue of your power of attorney, settle any of the difficulties alluded to in your conversation with the King ?

A. I never did. I made inquiries about business; never accomplished any thing; consulted legal advice. There was one important thing, one loan I negotiated.

Mr. B. Was the copy of the Contract of 1841 filed here—the copy which you carried to Europe ?

A. Yes, sir.

Mr. B. Did you bring that copy back with you ?

A. I did.

Mr. B. When did you place it in Mr. Ricord's hands ?

A. Not very long after my arrival here.

Mr. Ricord. I am ready to acknowledge that it may have been before the repulsion by Government, through me, of Ladd & Co.'s claims.

Mr. B. You spoke of seeing Mr. Obert in Paris. What did he propose ?

A. He proposed two propositions: one was to send a private agent to the Sandwich Islands without reference to you, and wanted my assistance and some kind of guarantee, which I considered dishonorable, and would have nothing to do with. He then proposed to freight a vessel by you. I replied I should prefer such a plan, if arranged with yourself.

Mr. B. Was any thing said by him about getting a ratification.

A. Not that I recollect. The idea was, that he wished to test the representations made by you ?

Mr. B. Was it not with a view of getting a ship on the way to the Sandwich Islands, for the eclat of the thing ?

A. I think that was some part, but not the only or main reason.

Mr. B. Did he consult with you as an agent under the appointment of the Belgian Company ?

A. I think the main point of his object was to keep it entirely independent of the company.

Mr. B. Did you make no objection to any preliminary measures by Mr. Obert, until France should recognize the independence ?

A. I don't know that I made that any definite reason; but the main reason why I opposed the proposition was, that I supposed it objectionable to you.

Mr. B. Was it not with the view of hastening the recognition, in order to remove the obstacle, that he interposed his kind offices ?

A. What was the definite reason in his mind I don't remember. I know that he expressed favorable wishes in regard to the recognition.

Mr. B. Was it not understood that the King should have the appointment of part of the Board of Administrators in the Royal Community ?

A. It was.

Mr. B. Was it not designed to give the Government the controlling power over all the movements of the company ?

A. It was, and was a reason in my own mind for signing the document. I claimed the privilege to subscribe, according to the agreement of 1841, \$20,000.

Mr. B. Did you not agree to subscribe \$20,000 in any event, and \$50,000 if the cattle, stone, &c. of the islands could be capitalized.

A. I decidedly expressed the wish to have the right to subscribe reserved to the King.

Mr. B. When you went with me to Ghent, did you not present that idea to persons there ?

A. I am unable to say where, but I did express my wish on the part of the King.

Mr. B. Did I engage to the King that I would secure his recognition abroad ?

A. No sir, you only engaged to do what you could ; you did promise that the contract of 1841 should not go into effect until the independence was obtained, and further a guarantee on the part of the three Governments.

Mr. B. Was there any pledge given of that ?

A. Not in writing but in words.

Mr. B. Was not the pledge sent up by me all that I promised ?

A. I did not consider it so, and felt anxiety.

Mr. B. Was there any requirement of this sort at the time ?

A. Nothing definite in words, but the Government expected it, and thought it was rather a philanthropic plan of yours.

Mr. B. Are you aware of any difficulty attending the delivering of sealed letters to the sovereign of England ?

A. I am.

Mr. B. What are they ?

A. The rules are that no sealed letter can be delivered unless a copy is left at the Foreign Office, that the contents may be known.

Mr. B. Does the same rule exist in France ?

A. I suppose there is the same rule at the court of France, but think it is not so strictly adhered to in France as in England.

Mr. B. Were those letters delivered which were entrusted to me ?

A. I have full reason to believe so, and one of them has been directly answered.

Mr. B. Was the answer received while you were absent ?

A. Yes sir, I understood so.

Mr. B. Could the difficulty have been well overcome but for my presence in London ?



A. I have every reason to believe that those letters would be received without the assistance of Mr. Brinsmade, as other letters have been received, addressed in the same manner.

[Mr. Brinsmade here filed as collateral evidence of the influence produced by those letters at the time, a letter of Mr. Fox to Secretary Upshur. [See Appendix—Doc. S.]

Mr. B. Did you allude in your first letters to Lord Aberdeen, to that letter of the King of the Sandwich Islands to the Queen?

A. I think I did make some allusion to it,—the letter was not discussed.

Mr. B. Did you and Sir George previous to the recognition of April 1st, pursue the object of the letter so far as it related to the guarantee, or the “Triad Plan?”

A. We conversed with Lord Aberdeen on the point. I had satisfied myself in Washington that the triple guarantee could not be obtained, and your letter of the 31st December, 1842, states the same idea.

Mr. B. Did you converse with Mr. Addington on the subject?

A. I conversed before the recognition by France, with Mr. Addington, after the recognition by England, and I received a verbal promise from Lord Aberdeen of the guarantee.

Mr. B. When you took the engagement from the Belgian Company that they were not to proceed in the execution of the Belgian Contract until the recognition by France, did you consider that that recognition would be equivalent to meeting any engagements under which I was?

A. I considered it would be; that there would be no obstacle in the way of your fulfilling your engagement with the company.

Mr. B. You spoke of fears on your arrival in the United States, that I had lost sight of the recognition; did you find those fears realized on your arrival in England?

A. In one respect they were, and in another not. I did not find the evidence that I wished to find,—that, could the lease have been sold, it would not have been. As far as any sale had been effected, my fears were groundless. I never supposed you had lost sight of the object, except that in case it was impossible to effect the recognition, I feared that the sale would be effected.

Mr. B. Did my letter to you, referring to an interview with the King of the Belgians, convey the idea that I had lost sight of the independence?

A. I never supposed you had lost sight of that object, but merely feared that the sale might take place, without the recognition being effected; that was my fear.

Mr. B. What did you state to the Belgian Company in reference to native rights?

A. I recollect the subject was conversed upon, but could not

tell definitely what I stated on the subject. I recollect my own views were clear on the subject, and I must have expressed those views clearly. I expressed in very strong terms the belief that there were very few lands on the Sandwich Islands, in which the natives had not rights, and added more than once, that that would not be an obstacle in carrying out the business of the Company as was proposed, as it was intended that they should improve their own lands, and that there never would be any difficulty in inducing the natives to cultivate their lands, *provided*, the business was made profitable.

By the Board. What lands were meant by unoccupied or unimproved lands?

A. Those not occupied by natives, and in which they had no rights. My idea that there would never be any difficulty in getting natives to cultivate lands which they themselves owned.

Mr. B. Have there ever been objections to leases on the ground of native ownership?

A. Vast numbers, and many leases subscribed by the King and Premier were merely signed "approved." Those leases that were given by the sovereign of the country, were signed by the King and Premier.

Mr. B. Was any question of title raised in the lease of Koloa plantation?

A. I don't recollect that there were any questions of title raised anterior to the laws of 1839. From that period a new practice was adopted.

Mr. B. Was it understood that the questions and references in the book of laws referred to at that day, were discussed at that time?

A. I did not mean to imply that the clauses which I marked the other day were specifically discussed, except the one clause I mentioned, that point was particularly discussed.

Mr. B. Was not the clause pledging respect for the rights of the natives, inserted by me in the draft of the contract of 1841, *before* any discussion rose on the subject?

A. I am not able to say; the whole was drawn up by you.

Mr. B. Was not that clause received from me by Government or yourself as a kind consideration of regard for the interests of the natives?

A. It was, as a particular proof of kindness.

Mr. B. You spoke of particular localities,—were these localities spoken of, as in any other view than as those on which operations might at once commence?

A. They were mentioned as favorable localities, which might be had at once.

Mr. B. Did you not recommend to the Belgian Company that five sugar mills might first be sent?

A. I said that five *might* be the number, possibly eight.

Mr. B. I will repeat the question. Did you not *recommend* to the Belgian Company that five sugar mills might first be sent ?

A. I did give my *assent*; could not say I recommended it.

Mr. B. Did you not assign as a reason for not introducing more *present*, that you did not wish to outrun the progress of the natives ?

A. I often spoke in that way, but also said if the business should prove profitable, the natives would do more, with the aid of foreigners, and extend the system among themselves.

Mr. B. Was not the reason for extending the time twenty-five years, that the thing should go on gradually ?

A. I do not recollect definitely, what was the reason assigned.

Mr. B. You spoke of a bond to Mr. Calkin, did that apply to any particular spot ?

A. No. He was to have a certain amount of land in Hilo, or some neighborhood, and it was a question whether two such places could be found there.

Mr. B. In the negotiation of the contract of 1841, was it proposed or understood as more a favor to us than to Government ?

A. No sir. I never supposed that the Government was giving us any particular favor.

Mr. B. Was it not said to you before any proposition was made for the contract, that I was going to the United States and elsewhere, to sell out Ladd & Co.'s property ?

A. I don't recollect anything definite ; I had heard rumors ; I recollect you said the property could not be sold here to advantage, for want of capital.

Mr. B. I ask whether you did not *know* that I was going with a view to sell out ?

A. No sir, I did not know it as a fact. There was some reserve which I could not account for.

Mr. B. Do you recollect my having said that our property could not be sold here for want of capitalists ?

A. I don't recollect your having said anything on that subject ; the idea is familiar to me.

Mr. B. Now was it not with a view of going abroad and getting fair value, &c., that I made the remark in regard to my son ?

A. I don't recollect. I would say here that that remark may not have been made at that time.

Mr. B. Was the lease to Mr. Bernard given after you left for Europe ?

A. Yes sir.

Mr. B. Was it by the King ?

A. No sir, by Dr. Judd as Haalilio's attorney.

Mr. B. By whom was it signed ?

A. I never saw it. I think by Dr. Judd, approved by the King.

Mr. B. What was the attitude at that time?

A. Haalilio. (The word is used in two meanings.)

Mr. B. Did you know how I was regarded by Haalilio in my relations with you in Europe?

A. Our feelings were alike. He regarded you kindly, and with confidence.

Mr. B. Had the Belgian Contract been fully explained to Haalilio in every stage of the negotiation?

A. Yes sir, so much so that I was disappointed when I heard of the doubts in his letters, after my return.

Mr. B. Were you in diplomatic communications as particular to explain every particular?

A. I meant to be so.

Mr. B. Did he ever express dissent from the terms of the Belgian Contract?

A. He expressed anxiety, not dissent, after he left Europe.

Mr. B. Did you consider that in any part of the negotiation I urged you with any dishonorable importunity?

A. I did not—I should not give it such a term.

Mr. B. Were you always cheerful in your loans to me?

A. To say that I was would not convey the right idea; I felt the strongest wish to assist, but had some fears that I would not be justified.

Mr. B. You stated that your copy of the Belgian Contract was taken from mine. Did you ever see my copy before you saw it in this room?

A. I don't recollect the looks of the copy. I copied from one. I never had any doubt that the copies were alike. I think, decidedly, it was not the official copy that I copied from.

Mr. B. When was the copy which you had made out in London put into Mr. Ricord's hands?

A. Soon after my arrival here.

Mr. Ricord. I again admit the receipt of the copy before my correspondence with Ladd & Co.

Mr. B. You spoke of rumors in regard to the Contract of 1841 being afloat before you left. Was there any injunction of secrecy on my part?

A. I think it was mentioned as understood between us.

Mr. B. Was it kept secret by Ladd & Co.?

A. Not wholly so. The particulars, I think, were kept secret.

Mr. B. You spoke of statements in newspapers in the United States. Which newspaper did you refer to in your conversation with J. Hunnewell?

A. I am not certain that I saw them. I saw some in London, not in the United States. I heard them spoken of.

Mr. B. Did you not before leaving Europe definitely, expect that a ship would be sent out from Belgium previously to the ratification?

A. I had some expectation of a ship leaving before the ratification, and went so far as not to engage a passage in another vessel. I can hardly say that I thought a ship would sail at all. There was a full understanding between yourself and me, that if one could be procured we would come in her.

Mr. B. Did you authorize any reports, while in the United States, of large companies of emigrants coming out?

A. I did not—I did not expect they would ever come.

Mr. B. Can you refer to any newspaper which published those rumors that there were large companies of emigrants coming out?

A. I cannot.

Mr. B. From whom did you receive, in London, a copy of the resolution of the Legislature to defer leasing lands till your return?

A. In diplomatic dispatches from Dr. Judd.

Mr. B. Were you a member of the Cabinet when you gave to Mr. Jarves the address of persons in Europe?

A. I was not.

Mr. B. When were you appointed?

A. I became a member of the Cabinet in February.

Mr. Brinsmade wished to file extracts or postscripts to letters, to show what freight Mr. Richards expected to come out from Belgium.

Mr. Ricord objected to any part of the letters, and not the whole.

Mr. Richards also objected to the letters being published, as there were private matters in them.

Mr. Brinsmade withdrew the whole.

*Re-cross-examination by Mr. Ricord.*

Mr. R. Does the delivery of papers by Mr. Butler to Mr. Farnham, argue that he entertained a good opinion of Mr. Farnham's character and talents as a lawyer?

A. I think it does. Mr. Butler received credentials from respectable persons regarding him.

Mr. R. Did he speak to you of his character and talents?

A. He did. He spoke in decided terms of his character and ability.

Mr. R. An agency to be sent out to the islands has been spoken of as proposed by Mr. Obert. What was the object?

A. There were two objects: one was for the purpose of making inquiries and ascertaining the prospects of success, and the other was for a secret agency. The first was a more open one. I disapproved of the latter, but was willing to join with Mr. Brinsmade in the former.

Mr. R. Was it understood that the contract should not go into effect until the recognition of independence?

A. It was so understood by another engagement.

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Belgian Council General, is  
... given?

... supposed that it was not, and  
... contract was null.

Brinsmade had endeavored, and  
... when you arrived in Europe?

... and appeared to be doing

Mr. Brinsmade's letter to you of  
Dec. N. 1.

... awakened my anxiety. The  
... object of recognition, but had  
... and made me consult as to the

... Count de Hompesch or Mr.  
... had ever tried to negotiate the

... was that he had spoken of  
... were received from Mr. Brins-  
... company with Mr. Boursier  
... of Mr. Brinsmade with Count  
... to the contract than the

... that it was the most pre-  
... n-

... were distinct parties with which  
... where did you learn of this?

A. From Mr. Brinsmade. I am sure that there were two parties: one the Belgian Company of Colonization, and the other independent of it.

Mr. R. Do you know upon what footing Mr. Brinsmade was with those parties: Mr. Bourson, Count de Hompesch, and the other gentlemen? Was it as a mere *hanger on*, or was he on terms of intimacy?

A. He was on terms of intimacy—particularly with Mr. Bourson.

By the Board. Please to state the time and reasons you had for believing the Belgian Contract annulled.

A. The letter of Mr. Brinsmade of the 18th October, 1844, was the principal reason or foundation of my belief, and never subsequently hearing of it.

By the Board. Did you consider that those sites for five sugar mills were all that was intended to be comprised in the contract?

A. I considered the King pledged to find five sites, eight was the the highest number; and then the subject was brought up in relation to other articles. Opportunity was to be given to test the adaptation of the soil and climate of the Sandwich Islands.

By the Board. By what process of valuation did they get at the value in Belgium, in dollars and cents, of the properties embraced in the contract?

A. I recollect nothing very particular on that point.

Mr. R. Were they not desirous of getting information of the value of those things?

A. That was the object of Mr. Obert in proposing that a private agent should be sent to the islands.

By the Board. Have the parties suffered any actual loss, or has there been any interchange of money by either party?

A. I know of no particulars of loss, except the expenses of drawing up the contract. There has been no interchange of money.

By the Board. Do you know if it was understood by the officers of the Belgian Company, that they would have no right to claim more than eight sites?

A. I think they understood that they could *claim*, under the contract, no more than eight sites, but that at some future period there might be more sites.

Mr. R. Do you think that you could not have got access to the King of Belgium except through Mr. Brinsmade and Count de Hompesch?

A. If there had been any object in it there would have been no difficulty, though perhaps it would not have been so soon.

Mr. R. To whom were you indebted for an introduction to Count de Hompesch?

A. I think we were indebted to Mr. Brinsmade.

Mr. R. Do you think yourself indebted for the acquaintance with the King of Belgium to Mr. Brinsmade or Count de Hompesch ?

A. Probably so. We should probably not have visited Brussels but for Mr. Brinsmade.

Mr. R. In your conversations with Mr. Brinsmade, what was the theme—contract or independence ?

A. Nineteen-twentieths of the conversation was on the contract.

Mr. R. Please mention what was in the proposition of Count de Hompesch that gave you and Sir George offence ?

A. We considered that he had encouraged Mr. Brinsmade to remain there, and then tried, through us, to make a better bargain.

Mr. R. Were Sir George's credentials like yours ?

A. Yes ; but Sir George had no power of attorney.

Mr. R. Do you think at that date, that Mr. Brinsmade had the power to sell that lease or make a bargain with Count de Hompesch in regard to lands ?

A. Yes, sir.

Mr. R. At that date ?

A. Yes.

Mr. R. Had the independence been acknowledged by France ?

A. No. Mr. Brinsmade had not unconditional powers.

Mr. R. Who was Count de Hompesch ?

A. Count de Hompesch was President of the Belgian Company and member of the Board of Directors, and President of the Council General.

Mr. R. Who was Mr. Obert ?

A. He was the Secretary of that Company.

Mr. R. Who was Mr. Bourson ?

A. He was Editor of the Government organ in Brussels, and a personal friend of Mr. Brinsmade.

By the Board. Was Mr. Bourson a member of the Belgian Company ?

A. Not that I am aware of.

Mr. R. You stated something about a preliminary arrangement ; what was contained in it ?

A. It contained very little ; it was written on a small part of a page of paper. It had some particulars of the contract ; price of cession of Ladd & Co.'s properties, \$200,000. It was signed by Sir George Simpson in Brussels ; I think with merely the initials of Sir George and Mr. Brinsmade.

By the Board. Where did they get at the value mentioned in the Contract ?

A. Mr. Brinsmade, as I understood from him, had conversed upon the sum. Sir George and I were questioned as to the amount \$250,000 ; it was proposed that in case the price was fixed at \$200,000, they would buy the shares of him instead of paying him in



ares. They inquired in relation to Mr. Brinsmade's properties,—  
 intation at Koloa, stores, &c.

Mr. R. Did you ever take legal advice as to these two contracts  
 England ?

A. None. I think the lawyer in London who drew up the Bel-  
 an Contract did not see the one of 1841. The Belgian Contract  
 as originally drawn up in Brussels, and afterwards carried to Lon-  
 on to be remodeled, but the copy was thrown aside.

Mr. R. Was ever any price offered to Mr. Brinsmade, and ac-  
 epted by him so as to be binding other than the Belgian Contract ?

A. I don't know of any. I think not. I suppose that the Bel-  
 an Company did bind themselves to pay for the shares, if the con-  
 act was ratified by the Council General. I recollect no other con-  
 tion to pay money.

Mr. R. Why has not Mr. Brinsmade received his shares on his  
 ontract ?

A. I don't know. I have no positive knowledge.

Mr. R. Who was bound to provide Mr. Brinsmade his shares ?

A. The Belgian Company of Colonization.

Mr. R. Has the King and Government of the Hawaiian Islands  
 ver done anything to prevent the Belgian Company of Colonization  
 om carrying out the contract so as to prevent Mr. Brinsmade from  
 eceiving his shares ?

A. Not that I am aware of.

Mr. R. With whose money did you pay for drafting the contract  
 ith the Belgian Company of Colonization ?

A. The lawyer's draft in London I paid with the King's money.

Mr. R. Did you pay it for the King or Mr. Brinsmade ?

A. I don't recollect any discussion on the subject ; I made no  
 barge of it.

Mr. R. Some attempt was made yesterday to rob you of your  
 onors in negotiating the independence.

Mr. B. I disclaim entirely any such intention or attempt.

Mr. R. Well ; some attempt to make it appear that you were  
 ade a *cat's paw* of, in your negotiations in Europe.

Mr. B. I disclaim again any such attempt.

Mr. R. Well ; it seems so to my mind. Who did write the  
 etter to Mr. Guizot ?

A. The letter contains fourteen pages, less than two of which  
 ere written by Mr. Brinsmade. I have since yesterday looked at  
 he letter.

Mr. R. There was another letter from the Hotel Maurice to  
 ord Aberdeen,—who wrote that letter ?

A. On looking at the letters themselves, I am of opinion that I  
 owed Mr. Brinsmade yesterday, credit for having written more

than the facts with warrant. I think I have spoken too strongly of Mr. Brinsmade's agency in drafting those letters.

Mr. R. Do you think that Mr. Brinsmade's agency was essential to the success of your mission, or would any other common scribe have copied your letters in the same way?

A. Mr. Brinsmade did very little to obtain the recognition in England, and I have no evidence that he did anything of importance in France.

Mr. R. Was Mr. Brinsmade paid for his clerkship and assistance?

A. He was not. The first letter which he wrote,—one of August, or last of July,—was one which I thought much of.

Mr. R. Was there a loan shortly after made to Mr. Brinsmade?

A. Subsequently to that letter there was a loan.

Mr. R. How much?

A. £150, and there had been some previously.

Mr. R. Was the loan predicated on that letter, or was that any part of the reason of your loans to him?

A. I said to him that I would be responsible that he should never be called upon to pay back what he had had up to August or September, 1843, until he was in circumstances to do so without inconvenience, and added, smiling, "I consider that letter to be worth all I have advanced you."

Mr. R. When Mr. Addington spoke in regard to Mr. Brinsmade's *carte blanche* to sell lands, what was the impression of the British Government?

A. Mr. Addington considered it a slur on the Government.

Mr. R. Did Mr. Addington regard it as inimical to the British interests in the Sandwich Islands?

A. I had no definite conversation with him on that point.

Mr. R. Had you ever occasion to pay legal counsel for their assistance in Europe?

A. Yes; in two instances.

Mr. R. How does the payment to the lawyer compare with the payment of Mr. Brinsmade?

A. Much less was paid the lawyer than to Mr. Brinsmade.

By the Board. Did Mr. Brinsmade give you his note of hand for the £150 which you loaned him after he wrote the particular letter of which you have spoken?

A. He did.

Mr. R. Did you ever resort to a Mr. Cross of Thread Needle street for making out cases?

A. Yes sir, but we didn't make mention of them.

Mr. R. How much did he charge altogether?

A. Between sixty and seventy pounds, including what was done to the Belgian Contract.

**Mr. R.** Had you no distrust of Mr. Brinsmade's motives while abroad ?

**A.** I had great confidence in him.

**Mr. R.** Have you ever had occasion to be shaken on the score of that confidence ?

**A.** I think now that he was actuated some by pecuniary motives; before, I supposed he acted from motives of philanthropy alone.

**Mr. R.** Do you consider that Ladd & Co. have any rights of property in the copy of the contract of 1841, belonging to the King, which I have in my possession ?

**A.** Theirs is in Belgium. I consider they have now no right in it.

**Mr. R.** Do you consider the King and Government to have the right of transfer of *their* half ?

**A.** They have no transfer to make in the case ; they are the lessors; whatever right they had is given to the Belgian Company.

**Mr. R.** You said something of the right reserved to the King, of subscribing for shares ; have you subscribed for him, or named the number the King would take ?

**A.** I never had an opportunity to subscribe.

**Mr. R.** Was it understood that an opportunity would be given ?

**A.** He was to have some opportunity afforded him.

**Mr. R.** Was it understood that books would be opened for subscriptions.

**A.** The form is described in the Contract ; I don't know much about the forms.

**Mr. R.** How could it be done otherwise than by opening books ?

**A.** I don't know. He must have some opportunity to subscribe.

**Mr. R.** Did Mr. Brinsmade at any time endeavor to dissuade you from taking an engagement through Mr. Obert to wait for the recognition of France ?

**A.** No sir ; he did not. The promise was not signed by Mr. Obert.

**Mr. R.** Please give the history of the King and Premiers approvals of leases.

**A.** There have been a great number of leases by the chiefs and konobiki's, or landlords, which were not binding unless approved by the King, according to the law of 1839, and in numerous instances he has given his approval.

**Mr. R.** Is that more a matter of form than of substance ?

**A.** The Government had a portion of the lease money. In one instance \$5 was taken for Government from a rent of \$70; in another, \$10 was taken for Government from a rent of \$75. The approval of the King is required by the law of 1839.

**Mr. R.** What is the object of that law ?

A. The object was to secure to the Government its rights ; in most cases the Government claimed a portion of the lease money.

Mr. R. Were the clauses in the book of laws marked by you, those applicable to the lease of 1841 ?

A. They were those which particularly applied to landlords and tenants. They did then apply in 1841. Some apply inferentially.

Mr. R. Was there any part of the Contract of 1841, as drawn up by Mr. Brinsmade, objected to by you as dangerous ?

A. I expressed anxiety at the broad expression "all unoccupied lands," as expressing more than it was meant in regard to the lands.

Mr. R. Did you suggest modification or different form ?

A. I objected to *that* form, rather than suggested another.

Mr. R. Why was that clause urged to be left in by Mr. Brinsmade ?

A. Mr. Brinsmade mentioned that it would appear well in raising stock, and that no difficulty would result from it as the lease fully protected the "native rights." I do not suppose Mr. Brinsmade had any thing dishonorable in view in leaving that clause in.

Mr. R. Why was not the contract of 1841 more explicit ?

A. I don't know why the contract of 1841 was not more explicit ; it was done in a hurry. The design was to give the right of selection to Mr. Brinsmade.

Mr. R. Was it not for the disposal of Ladd & Co.'s property at Koloa that Mr. Brinsmade went to the United States ?

A. I don't know ; I inferred it rather than knew. I supposed he was going to the United States and probably to Europe. It was my impression that he was going and would do all he could for Government.

Mr. R. Was not Haalilio's tremulousness, &c., at the time of signing the Belgian Contract, attributable to your explanations of it ?

A. I did not suppose so at that time, but supposed it arose from ill health. I supposed so until my return to the Islands, when I heard rumors that he felt anxious about the Contract.

Mr. R. I notice the name of J. B. de Fiennes signed to the Belgian Contract. Has he any connexion with it ?

A. I know of none except what Mr. Brinsmade told me in London, that he had engaged Mr. de Fiennes, and agreed to pay him well if he succeeded. When the judgeship was offered Mr. de Fiennes here, he said he could not act in the case of Ladd & Co., as he was interested. He said this voluntarily ; perhaps he alluded to the difficulties between Ladd & Co. and the Government.

Mr. R. I have no more questions to ask the witness.

Mr. Brinsmade said, I have one or two more questions.

Mr. B. Did not the King specially desire that the grant which he gave to me, should be made as extensive as it was, that he might have an excuse to refuse other applications for lands ?

A. I have no recollection that he expressed those views.

Mr. B. Was it not your habit to take my notes from my table and copy sheet by sheet, as you wrote the long letter to Mr. Guizot?

A. With some exceptions directly the opposite; the loose papers were taken by you from me, and a perfect copy made from them.

Mr. B. Did you not request me to give you my original manuscripts before I left Paris for Belgium?

A. I don't recollect.

Mr. B. Has there not been an accord between yourself and Mr. Ricord, in reference to these questions?

A. There has not; on the contrary, he intimated on the first day that we had better not converse on the subject.

Mr. B. I have done with the witness.

The Board notified the parties that there would be a recess of some ten days, to enable them to prepare the proceedings thus far for the press, and for other business.

Board adjourned to Monday, Sept. 28.

#### TENTH DAY.

[The Court was this day held in a room below the Foreign Chapel devoted to public purposes.]

Mr. C. G. Hopkins was sworn to act as stenographer.

Mr. Brinsmade. I propose to resume the taking of testimony in regard to the claims under consideration, by the examination of Mr. De Fiennes, who has been already sworn.

Mr. Ricord. I beg to state that I object to the examination of Mr. De Fiennes as a witness, on the ground of his pecuniary interest and personal feeling in the matter, and also upon the ground that he was counsel in the case; not that counsel could not be examined, but that circumstance, coupled with his other objections, afforded abundant grounds for excluding Mr. De Fiennes. I wish for that purpose to introduce the testimony of Mr. Judd and Mr. Wyllie, and such documents as they might possess bearing upon his (Mr. De Fiennes) competency as a witness.

The Board said that any evidence showing interest might be produced, but as to the matter of feeling that could not be considered.

Mr. Ten Eyck. On the part of Mr. Brinsmade, who is not acquainted with legal niceties, I would propose to the arbitrators and Mr. Ricord, whether the question of Mr. De Fiennes' interest ought not first to be ascertained by examining him on his *voire dire*.

Mr. R. Foreseeing that Mr. De Fiennes would be called upon, I have taken pains to look into the subject. I will quote from Starkey.

"Unless the interest of the witness be apparent from the record itself, or from the admission of the adversary, it lies with the party who makes the objection, to support it (m) either by the examination of the witness on the *voire dire*, or by independent evidence (n)." Starkey, vol. 1, p. 135.

"In *R. v. Wakefield and others*, Lancaster Spring Assizes, 1827, on an indictment for a conspiracy to carry away Miss Turner and marry her to one of the defendants, on an objection taken by the defendants to the competency of Miss T., on the ground that she was married to one of the defendants, Hullock, B. held that the proper course was first to examine Miss T. on the *voire dire*, and afterwards to adduce collateral evidence."

"If the witness discharge himself on the *voire dire*, the party who objects may still afterwards support his objection by evidence; but in so doing the objecting party is bound by the usual rules of evidence, and cannot inquire as to the contents of a written instrument without producing it, or proving the usual preparatory steps." Starkey, vol. 1, p. 136.

The Board said that according to that quotation they thought Mr. De Fiennes should be examined first on his *voire dire*.

Mr. R. It is optional with me.

Mr. T. E. I will quote from Starkey, vol. 2, p. —. "There are two ways," &c.

"If a Court found the witness interested, although he had purged himself, it would direct the jury to reject his evidence. It was customary to examine the witness on his *voire dire*, but if he had been sworn in chief, there was no occasion to swear him again on his *voire dire*."

Mr. R. I think I have the option to pursue either course.

"If the witness discharged himself on the *voire dire*, the party who objects may still afterwards support his objection by evidence."—Starkey, vol. 1, p. 136.

"It would manifestly be unjust to preclude the party from impeaching the competency of a witness by satisfactory evidence, merely because he had taken the objection in the first instance in the proper mode, and the witness had been hardy enough to misrepresent his situation." See *R. v. Wakefield and others*, Supra 135, note (n).

Having the option, I prefer the introduction of evidence.

Mr. T. E. Let us see what goes before what Mr. Ricord has read.

"The objection to competency ought properly to be taken in the first instance, previous to an examination in chief, for otherwise the party objecting might suspend the objection for the purpose of obtaining an unfair advantage."

And in a note.

"Formerly it was necessary to have the witness sworn on the *voire dire*, and to take the objection before he was sworn in chief, but the rule has been relaxed for the sake of convenience." See 1 T. R. 717.

"The witness may be examined on the *voire dire* in criminal as well as civil cases." *R. v. Muscot*, 10 Mod., 192. See Lord Lovat's case.

Mr. R. I can take either course : I have no objection, however, to the *voire dire*.

Mr. T. E. I think it is not optional ; but that it is necessary to examine the witness first on his *voire dire*.

Mr. R. Still it remains with me afterwards to judge whether I will ask for the introduction of sustaining evidence. According to law, the highest evidence capable of being produced ought to be produced, and I think the evidence of the witness is not the highest evidence.

Mr. T. E. I think it is the highest evidence.

By the Board. Of course the witness knows best whether he is interested or not.

Mr. R. There is a supposed case that is very applicable:

" If a party be really interested in the event of a cause, he is not competent, although he does not apprehend that his interest is a legal one ; for it would be exceedingly dangerous to violate a general rule because the witness does not understand his legal responsibility."

" It has indeed been said that a witness who conceives himself to be under a *legal* engagement is incompetent, although he is mistaken." Starkey, vol. 1, p. 104.

That shows that a witness might be honestly mistaken, but he was not competent nevertheless. From an opacity of mind it might frequently happen that a witness might not apprehend his own interest.

Mr. T. E. Yes ; but in the first place it is necessary to examine the witness and then bring in the evidence.

By the Board. If in the course of the cross-examination of the witness any thing can be shown as manifesting any interest, his testimony will be qualified by that circumstance.

Mr. De Fiennes was then called to the stand. Witness had been previously sworn.

*Examination of Mr. De Fiennes by Mr. Ricord.*

Mr. R. Will you state whether you have any interest in the Belgian Contract ?

A. I will first state that I have no interest in this case but my lawyer's fees.

Mr. R. What interest have you in the Belgian Contract ?

A. My fees as a lawyer.

Mr. R. No other monetary expectations ?

A. No.

Mr. R. Did you ever state that you had ?

A. I believe not.

Mr. R. Did you ever converse with Mr. Wyllie or Mr. Judd on the subject of the Belgian Contract ?

A. I conversed very often with them on the subject, and told them my views and opinions.

Mr. R. Did you ever state that you would be incompetent to sit as a judge in any case in which Ladd & Co. were concerned ?

Mr. T. E. I do not see the relevancy of these interrogations. The question was whether witness was interested in the suit. The Belgian Contract was not the thing in question. The question was whether Mr. De Fiennes was interested in this case.

Mr. R. I want to see whether the witness has not mistaken his interest. Mr. De Fiennes said he had conversed with Mr. Wyllie and Mr. Judd on the subject: I wished to have those gentlemen sworn to show what witness had said: I want to show that he is incapacitated in law for a witness: that he came here as agent of the Belgian Company—at all events he was introduced as such: that he was under the patronage of Dr. Wood, Mr. Ladd, and Mr. Brinsmade: that he was their counsel, and had a resulting pecuniary interest in the case.

Mr. T. E. I suppose that was the point about which Mr. De Fiennes was to be questioned.

By the Board. It appears to us that Mr. Ricord has only the right to ask the witness whether he has any direct pecuniary interest, and if he said so, that then he had no right to call in other evidence.

Mr. R. I wish to introduce those two witnesses, that any weight which Mr. De Fiennes' testimony may have hereafter, in case of reference being made to an umpire, it might have that weight with the evidence alluded to beside it.

Mr. T. E. Mr. De Fiennes have you any legal interest in the event of this case ?

A. None except my fees.

Mr. T. E. Does that depend on the result ? Have you made any bargain that you get nothing in case this arbitration goes against them, and that you shall be paid if it goes in their favor ?

A. No. I have only this interest, that if the case goes against them they may not have money to pay me.

Mr. T. E. Have you made any bargain for your services depending on the success of this suit ?

A. No.

Mr. T. E. In the words of the law then, have you any legal or certain vested interest in the result of this suit ?

A. No—none whatsoever.

Mr. R. I wish to call my witnesses.

Mr. T. E. I wish to ask what is Mr. Ricord's object, whether he wants to impeach Mr. De Fiennes ?

Mr. R. I want by that evidence to place the umpire in the same position as the arbitrators with regard to Mr. De Fiennes, that he may know all the motives, and bias, and prejudice which Mr. De Fiennes had. He had expurged himself in his *voire dire*. I wish to place the umpire on the same footing as yourselves. Mr. De Fiennes has



declared himself to have no resulting interest, and I hardly expect that you will throw him out; but I want my evidence on that point to be received.

Mr. T. E. As I understand it, Mr. Ricord's object is to try Mr. De Fiennes.

Mr. R. Not so. I do not object to his being received, but I wish his evidence to go with its proper weight to the umpire.

Mr. T. E. It seems a very singular course, after Mr. De Fiennes has sworn and testified that he had no interest, to call on witnesses. Mr. De Fiennes had purged himself, and he ought to be allowed to go on. By and by, as the evidence proceeds, it may possibly be shown that Mr. De Fiennes was not entitled to full credit, therefore his testimony ought not to receive that weight which might be given it under other circumstances. But I do not think it is the way to try at the start whether he was interested. He having purged himself, it strikes me that the arbitrators were bound to take his evidence. If other evidence should show that he was interested, proper allowance would be made for it, but that evidence ought to come in the progress of the case.

Mr. R. I think it has been understood at the beginning, that after the witnesses' examination on his *voire dire*, I had a right to object and introduce other evidence.

Mr. T. E. I coincide with Mr. Ricord—he has the right to introduce other evidence affecting his credibility, but it ought to be done in the progress of the case. Mr. De Fiennes has sworn on his *voire dire* that he had no interest, but if it is proved that he had an interest, allowance would be made.

By the Board. We think it should be done in the first place, before the evidence had operated on the mind of the court.

Mr. T. E. It seems to me that they are going to impeach Mr. De Fiennes. I would ask was Mr. De Fiennes to be believed on oath?

Mr. R. I was impeaching Mr. De Fiennes' interest and not his veracity.

Mr. T. E. If Mr. Ricord can prove Mr. De Fiennes to be interested, that would impeach his veracity.

Mr. R. Yes, if I brought forward facts. I might bring forward facts to show that he was interested, although he thought he was not.

By the Board. Unless it can be proved that he is not to be believed under oath, Mr. Ricord cannot do away with what Mr. De Fiennes had said.

Mr. R. "If the witness discharge himself on the *voire dire*, the party who objects may still afterwards support his objection by evidence; but in so doing the objecting party is bound by the usual rules of evidence, and cannot inquire as to the contents of a written instru-

ment without procuring it, or proving the usual preparatory steps.”—Starkey, vol. 1, p. 136. The author is there speaking of the introduction of the witness, and of his being brought for the first time on the stand, and there the *voire dire* is put. If he declares himself to have no interest, and the other party still objects, then evidence may be introduced.

By the Board. That cannot be done without impeaching his veracity—is not that the object?

Mr. R. No.

By the Board. Are we not to take his direct testimony in preference to collateral evidence?

Mr. R. I think it is for you to take the evidence, and afterwards to judge of it. I understand the object to be to show that anterior to this suit the gentleman had expressed himself to have an interest in the result of these things, which he had not abandoned. I want to show that it was a pecuniary monied interest, and that he had confessed it.

By the Board. The witness has just stated that he has no interest whatsoever. Either we must receive him as a witness and believe his testimony, or Mr. Ricord must impeach him.

Mr. T. E. Mr. De Fiennes has stated on oath that he had no interest. Any evidence that Mr. Ricord might introduce would be what was said when he was not under oath; but the object would be to impeach his testimony.

Mr. R. Not so, but to show that he is not a competent witness.

Mr. T. E. To show that what Mr. Ricord has said did not bear the construction he had put upon it, I will quote from Greenleaf, in the text, page 495, and also Note number 3:

“In the old books, including the earlier editions of Mr. Starkie’s and Mr. Phillips’ Treatises on Evidence, the rule is clearly laid down, that after an examination upon the *voire dire*, no other proof can in any case be resorted to; excepting only the case, when the interest was developed in the course of the trial of the issue. But in the last edition of those works, it is said that “if the witness discharge himself on the *voire dire*, the party who objects, may still support his objection by evidence:” but no authority is cited for the position. 1 Starkey Ev., 124; Phil. & Am. on Ev., 149; 1 Phil. Ev., 154.”

“The question of competency is a collateral question; and the rule is that when a witness asked a question upon a collateral point, his answer is final and cannot be contradicted; that is, no collateral evidence is admissible for that purpose. 2 Camp. 637; 14 Peters, 448, 461; 7 Wend. 57; 2 Gallis, 53; 2 Stark. Rep. 149, 157.”

That is exactly what I think ought to be done in this case.

Mr. R. I think it a matter of considerable importance to the arbitrators to know exactly what the interest of the witness is. Al-

though they did not reject his evidence, that knowledge would aid them in giving it its proper weight.

By the Board. Allowing that Mr. de Fiennes did say a week ago that he had an interest, he may subsequently have dissolved it.

Mr. R. I hope to be able to show that the result of the suit would place money in the witness' pocket, that the result would be in his favor.

Mr. T. E. That can be proved in the progress of the case.

By the Board. The witness has sworn that such was not the case, and he must be believed unless Mr. Ricord proves him to have perjured himself.

Mr. R. The only way is to produce facts for the arbitrators to judge by.

Mr. T. E. Mr. Ricord may at any time introduce evidence to show that Mr. de Fiennes was not a competent witness.

Mr. R. I do not wish to impeach Mr. de Fiennes' veracity.

Mr. T. E. I think that if by and by, Mr. Ricord could show that Mr. de Fiennes was not entitled to full credit, he has the right to introduce that evidence.

Mr. R. I will read again from Starkey, vol. 1 pp. 103, 4 and 7:

"The law will not receive the evidence of any person, even under the sanction of an oath, who has an *interest* in giving the proposed evidence, and consequently whose interest conflicts with his duty.

"This rule of exclusion, considered in its principle, requires little explanation; it is founded on the known infirmities of human nature, which is too weak to be generally restrained by religious or moral obligations, when tempted and solicited in a contrary direction by temporal interests. There are, no doubt, many whom no interested motive could seduce from a sense of duty, and by their exclusion this rule may, in particular cases, operate to shut out the truth.

"But the law must prescribe general rules; and experience renders it probable that more mischief would result from the general reception of interested witnesses than is occasioned by their general exclusion. The principle is sufficiently obvious; its application frequently difficult."

"Hence the law defines the kind of interest which shall exclude; it must be a *legal interest* in the event, as contradistinguished from affection, prejudice or bias. Here the law draws the line of distinction, which must be drawn somewhere, and which would exclude too much of the means of discovering the truth, were it to incapacitate every witness who from kindred, friendship, or any other strong motive by which human nature is usually influenced, might be suspected of partiality." Starkey, vol. 1, pp. 16 and 17.

"The interest to disqualify, must be some legal, certain and immediate interest, however minute, in the *result* of the cause, or in the *record* as an instrument of evidence, acquired without fraud."

"In the first place it must be a *legal* interest in the event of the suit, or in the record, as contradistinguished from mere prejudice or bias, arising from the circumstance of relationship, friendship, or any other of the numerous motives by which a witness may be supposed to be influenced." Starkey, vol. 1, pp. 103 and 104.

Again in a case "When actual gain or loss would result simply and immediately from verdict and judgment." Starkey, vol. p. 107.

The witness has a resulting interest,—he has his fees,—but exculpates himself on the ground that he should get them whether the case was gained or lost, although he himself had said that if the thing were lost he did not know that they would pay him.

By the Board. The question is whether Mr. de Fiennes is to be believed.

Mr. R. I contend that Mr. de Fiennes ought to be believed.

Mr. T. E. Mr. Ricord has to introduce evidence to affect his credibility or competency. But I would like to have Mr. Ricord reply to the law which I have read.

Mr. R. I want to show some motives for excluding the witness.

Mr. T. E. I ask whether they could not come in in the course of the proceedings so as to affect his credibility?

Mr. R. The evidence previously given might poison the mind of the court.

By the Board. Mr. Ricord must either go for throwing out Mr. de Fiennes' evidence altogether, or else he must be admitted as a witness. If Mr. Ricord wishes to throw out his evidence, it is necessary to impeach him. The decision is that the witness shall be heard.

Mr. R. I wish that decision to be recorded.

Mr. T. E. I have no objection to have it recorded, that after Mr. de Fiennes had been examined on his *voire dire*, Mr. Ricord wished to bring forward witnesses to prove him incompetent, and that the arbitrators refused.

Mr. R. And that they also decided that the only way was for Mr. Ricord to impeach Mr. de Fiennes' veracity, which he did not wish to do.

Mr. R. The arbitrators have excluded me from introducing evidence that would have great effect with an umpire, if the thing went before one. I decline to take the ground the arbitrators have pointed out with regard to impeaching Mr. de Fiennes' veracity. I would wish to show that Mr. de Fiennes had been dependant upon the house of Ladd & Co. for support.

Mr. de F. That is not true.

Mr. R. And that he has a resulting interest in the Belgian Contract. I have the most serious objection to the examination of Mr. de Fiennes. I believe him interested, but that he means to tell the truth and that he has told the truth so far as he knows, but that he

s interested and would vastly rather have it go in Ladd & Co.'s favor than have it go against them.

Mr. T. E. Then again, at the request of the arbitrators, I will read the quotations alluded to, from Greenleaf, p. 495. Starkey, 2 vol., p. 756, note 2, lays down the same rule:

"When a witness has been examined by the party against whom he is called, as to his interest in the event of the suit, other witnesses cannot be inquired of as to his interest; and it is immaterial whether such examination were under the general oath, or the *voire dire*, or whether it were in court or before a magistrate taking a deposition out of court." *Butler v. Butler*, 3 Day, 214.

"Where a party on the trial elicits to prove the interest of a witness on the *voire dire*, and the witness purges himself and is sworn in chief, the party shall not, on motion for a new trial, be permitted to show, by other evidence, that the witness was interested." *Don v. Osgood*, 2 Tyler, 28.

In regard to questions to be put to Mr. De Fiennes as a witness, the question was whether he had any interest in the case. "The true test," &c. Mr. Ricord ought to confine himself to Mr. De Fiennes' legal vested interest, but circumstances might be shown by other testimony by which it would appear that Mr. De Fiennes had said or done things or was in some way connected with this affair, for which allowance would be made.

Mr. R. I give notice that I mean to bring witnesses to bear upon what Mr. De Fiennes might say in order to affect or dilute that gentleman's evidence.

By the Board. The arbitrators have decided to hear Mr. De Fiennes.

### *Examination of Mr. De Fiennes by Mr. Brinsmade.*

Mr. B. Of what country are you?

A. From Belgium.

Mr. B. Where was your place of residence in Belgium?

A. In Brussels.

Mr. B. What was your profession there?

A. Advocate.

Mr. B. Is that the profession of a lawyer as generally understood?

A. Of a pleading lawyer.

Mr. B. How long have you been in that profession?

A. Since 1824.

Mr. Ricord. I beg leave to remark that the production of Mr. De Fiennes' parchments would be necessary. Mr. De Fiennes' own words were well enough, but I would like his highest evidence, viz: his parchments, to be produced in court.

Mr. De F. I cannot produce my diploma of admission, but I

have other documents to show that I am a pleading lawyer admitted to the bar.

By the Board. We wish them to be produced.

Mr. B. Have you held an official appointment under the Belgian Government?

A. Yes, sir.

Mr. B. What was that appointment?

A. One of the lawyers of the Treasury Board in the Department of Finance, or Treasury Board of the Government?

Mr. Ricord. I should like that to be proved by the highest kind of evidence, as it gives weight.

Mr. De F. I will find proof of it. [See Appendix—Doc. W. 1 and 2.]

Mr. B. What were your relations to the Belgian Company of Colonization—or any of its officers?

A. I was the lawyer or solicitor of the general agent of the company.

Mr. Ricord. I would suggest that documentary evidence be produced of that: the resolutions of the board would show the fact.

Mr. B. Were your relations to him in your private capacity?

A. In his private capacity: not as a lawyer appointed by the company.

Mr. B. When and where did you first know me?

A. In the office of the company.

Mr. B. What time?

A. In the early part of March, I believe, 1842.

Mr. B. Are you quite certain that it was in March, or in the autumn of 1842?

A. I do not exactly recollect the month; but I recollect that it was in 1842.

Mr. B. For what purpose was I put in communication with you?

A. You arrived in Brussels from Paris bringing letters to the Belgian Company; and the general agent not understanding English, wrote a note to me to come to the office, saying that an American gentleman had business with the company, and as I understood English, requesting that I would be present to know his business.

Mr. Ten Eyck. For what purpose did you understand that he had arrived?

A. For the purpose of entering into negotiations with the Belgian Company.

Mr. Ricord to Mr. Ten Eyck. Are you assisting Mr. Brinsmade?

Mr. T. E. I am taking testimony.

Mr. R. I wish the gentleman's name taken down as counsel.

By the Board. We think that is necessary.

Mr. T. E. I am not employed, and I would not be employed by Ladd & Co., but I mean to assist them.

**Mr. R.** I wish Mr. Ten Eyck's name to be put on the record.

**Mr. T. E.** That may be done, but not as counsel.

**By the Board.** It is but fair that the other side know who they are contending with.

**Mr. T. E.** They are contending with me so far as legal principles are concerned; but I am not employed by them, (L & Co.) and will not be.

**Mr. R.** I am not employed.

**Mr. T. E.** But you are an officer of Government and receive a salary.

**Mr. R.** Mr. Ten Eyck is an officer of the American Government, and receives his salary.

**Mr. T. E.** I am not defending the United States Government.

**Mr. R.** My position is peculiar: my adversary himself is no ordinary man, while Mr. Ten Eyck is playing at bo-peep with me.

**By the Board.** Mr. Ten Eyck is counsel so far as legal principles are concerned: he aids them with his knowledge of law.

**Mr. R.** I think that legal principles are just what counsel are engaged to furnish. I have no objection to you or any one else taking testimony so long as they do not interrupt the court.

**Mr. B.** I wish to state that these claims were presented to Mr. Ten Eyck to be advanced and defended by him on diplomatic grounds. Mr. Ten Eyck was referred to the Attorney-General for information and the views of the Government in regard to the mode in which those claims were to be discussed and disposed of. The result of that conversation and reference was the compact under which they were then acting; and I have never felt that by agreeing to arbitrate, the thing had been taken out of Mr. Ten Eyck's hands. The whole arrangement was one effected by that gentleman as agent of the United States Government, and I have requested him to come forward to assist me by his legal knowledge before the gentlemen arbitrators. Mr. Ten Eyck has at length consented to do so, and appears neither in my pay nor having the least interest in the result farther than the evolving of truth would make the case to the arbitrators clear and intelligible. That is the aid I want of Mr. Ten Eyck. I have not invited that gentleman to join me as a partizan, but to assist in developing the truths which bear upon the case. In this view I wish the assistance of Mr. Ten Eyck; and when I may err in the form of a question, or travel out of the record, I wish his counsel and advice in calling me back; and I suppose that in that design I should have the countenance of the arbitrators.

**Mr. R.** I do not object to that—I only wish to know in what capacity he appears.

**Mr. T. E.** I come here to support Mr. Brinsmade, but I'm not paid or fee'd—I would not consent to be.

Mr. R. Many persons appear so, but still they were responsible to the court.

Mr. T. E. I have no objection to the responsibility.

Mr. R. I wish Mr. Ten Eyck to be as responsible for breaches of decorum, &c. &c. as myself. There is an apology for a treaty made with Thomas Ap Catesby Jones, which says that the Consul shall assist American citizens. Since that time the Government has been honored by Commissioners from the United States, and the late Commissioner was ordered not to interfere with cases until they had gone through the courts of the country. Mr. Turrill is the representative of the Americans: Mr. Ten Eyck's duties are holier and higher. I wish that Mr. Ten Eyck and Mr. Wyllie should have their hands clean of the matter in case it comes to be treated diplomatically. That seems to be to me a sound reason for wishing to know how Mr. Ten Eyck appears here.

Mr. T. E. If this were a court of the country I would not appear, but I looked upon it in a different light. I would not perhaps go down to a case in Judge Andrews' court. You may put me down what you like, so long as you do not call me fee'd counsel. I did not intend to have any thing more to do with the case, but I have received advice since the last session of the arbitrators, which makes me feel bound to follow; and I now appear here defending the rights of American citizens.

Mr. R. No, no. On a former occasion when I put the same questions as now to Mr. Ten Eyck, with regard to his being counsel, he disclaimed it. With regard to the other observation, that no disparity should be allowed to them, I would observe that I did represent the nation, whereas Mr. Ten Eyck merely represented private parties. Then again, if any thing should unhappily escape me of a disparaging nature, I wish it to be understood as relating to Mr. Ten Eyck, and not to the United States Commissioner.

Mr. T. E. Certainly you may say just what you like, I shall take it as to Mr. Ten Eyck.

Mr. R. But would the world say so. Would the world not say that I had been disparaging the United States Commissioner? Mr. Ten Eyck is then a special counsel in examining witnesses.

Mr. B. to Mr. De F. What inquiries were you instructed to institute with me?

A. To examine most minutely all documents of property or the papers you had, and to see what confidence might be placed in your statements.

Mr. B. To what did those statements refer—what statements do you allude to?

A. About the several contracts you had in your possession.

Mr. B. Did I furnish you with any particular statements?

A. Yes. I made out a long series of questions upon every thing



that related to the business, and you gave me full answers in detail, which I handed to the company.

Mr. B. Did I describe each item of property which I had at my disposal with great minuteness?

A. Yes, very. You were obliged to do so by the nature of the questions.

Mr. B. Did any other person take part with you in those examinations?

A. Yes, Mr. Bourson.

Mr. B. In what relation was he to the Ministry of Belgium?

A. He was, and is still I believe, the Director of the Government Press, and intimate friend of Mr. Nothomb, the head of the Belgian Cabinet at that time.

Mr. B. Through whom was I introduced to Mr. Nothomb?

A. Through Mr. Bourson and myself.

Mr. B. For what purpose?

A. For the purpose of explaining your business to Mr. Nothomb, and to show him the advantages that might be derived through the execution of it to Belgium.

Mr. B. Did I state to him any conditions upon which I was to negotiate?

A. Yes.

Mr. B. What were they? What were the conditions by which I was restricted?

A. You stated that in order to carry out the plans you proposed, the independence of these islands was to be secured

Mr. B. By what powers?

A. By France and England.

Mr. B. Did he institute any inquiries in reference to the political relations of the Sandwich Islands?

A. Yes. He inquired if the English had no hold upon these islands, and you stated to him that you had already seen the English and French Cabinets, and that some promises were given favorable to the recognition. I believe though I am wrong. It was the English Cabinet alone.

Mr. B. What assurances were given to me in your hearing by Mr. Nothomb on the subject of the recognition?

A. Mr. Nothomb stated on the part of Belgium it would not be at all opposed.

Mr. R. I object to hearsay testimony. I cannot cross-examine it, and therefore it ought not to be taken.

Mr. T. E. It is law, and Mr. Ricord cannot object.

By the Board. Some latitude was permitted in Mr. Richards' testimony. Did Mr. Ricord wish a new rule?

Mr. R. I will read from the 1st vol. of Starkey, p. 25. "This test of truth not only excludes evidence of mere hearsay, for then the

party on whose authority the statement rests cannot be cross-examined; but also decrees and judgments in private matters, in causes to which the party against whom they are offered was not privy, and consequently where he had not the opportunity to cross-examine the witnesses on whose testimony the judgment or decree was founded. For as it would be dangerous to admit the testimony of a witness given upon a former occasion, where the party to the present cause had no opportunity to cross-examine him, it would be equally so to admit the judgment or decree which is founded upon that testimony; it would be indirectly giving full effect to evidence which is in itself inadmissible."

Mr. T. E. I wish to know whether the objection was made to the reception of all hearsay evidence?

Mr. R. If objected to, but if not objected to, it might be received of course.

Mr. T. E. The evidence will not be insisted on.

Mr. B. to Mr. De F. Do you know that in all my propositions to dispose of the property and contracts at my disposal, I made it a condition that the independence of the Sandwich Islands was to be recognized first?

A. I do.

Mr. B. Were you instructed by the parties with whom you were in correspondence, to assure me that an influence would be afforded me in favor of that object through that company?

A. Yes.

Mr. B. Through whom or whose agency was that influence to be exerted?

A. Through Count de Hompesch, President of the Company of Colonization, with the King of the Belgians, because he is a countryman of his, and on good terms of friendship with him.

Mr. B. Do you know that I was presented to the King of Belgium in the view of soliciting his influence?

A. Yes, I do.

Mr. B. Did you see a letter addressed to me appointing me an audience with the King?

A. Yes.

Mr. B. By whom was that letter written to me announcing the appointment of my audience with the King?

A. By Nothomb himself, I think.

Mr. Ricord. I wish that letter to be filed.

Mr. B. Do you know what were the views of the King of the Belgians in regard to the organization of a commercial company distinct from the Belgian Company of Colonization?

A. I do. First, the King had expressed in his discourse on the opening of the Chambers, that his views were to institute a large commercial company, to replace the company styled the "*Hollandsche Maatschappij*," which is the Dutch commercial company trading with

he East Indies and Sumatra. Since the Belgian revolution, the operations of that company were confined to Holland alone; and it was to replace it, or to have something instead of it, that the King intended to organize a new company.

Mr. B. What measures were pursued for bringing the facilities for commercial operations in the Pacific in connection with my plans before the Belgian Government? What measures were adopted, with your co-operation, for bringing the facts and an exhibition of property before the Belgian Government?

A. We made a memorial of your business, and a copy of all your plans was attached to it, which was sent to all the chambers of commerce in the country, in order to have a report upon the system that you proposed.

Mr. B. Did you go with me to Antwerp with the view of conferring with merchants there on the subject?

A. I did.

Mr. B. At whose recommendation?

A. At the recommendation of Messrs. Bourson, Nothomb, &c.

Mr. B. While in Antwerp what communication was addressed to you by Mr. Nothomb, through Mr. Bourson?

A. During the week we remained there, or after we had been there a week, I received a letter from Bourson stating that Nothomb had said to him that the King of Belgium was going to Paris, and that he advised you to be in readiness to go there, because you might be called upon.

Mr. B. With what object?

A. For the object of securing the independence—that was the plan named.

Mr. B. Were you informed that the King of the Belgians understood the whole object I had in view?

A. It was so stated by Mr. Bourson, and it appeared natural to me, because you had had two interviews with the King in order to explain the whole matter. On the second interview he must have advised you that you ought to lay all the documents before Nothomb, because you immediately went to work to prepare them.

By the Board. You did not know the fact—it was inference.

A. Yes, an inference from what he did.

Mr. B. Did you translate, with other documents for Mr. Nothomb, a copy of a letter from the King of the Sandwich Islands to the President of the United States on the subject of recognition?

A. I do not recollect.

Mr. B. Did you see such a letter among those documents? A letter purporting to be a copy of a letter from the King of the Sandwich Islands to the President of the United States?

A. I know it was stated by you to the Minister of Foreign Relations, that it was a copy of a letter addressed by the King of the

Sandwich Islands to the President of the United States. That was stated by you to the Minister of Foreign Relations.

Mr. B. Do you know that I laid before Government a copy of what I asserted to be a copy of a letter from the King of the Sandwich Islands to the President on the subject of recognition?

A. I know that you laid before the King a document that you said was a letter addressed by the King of the Sandwich Islands to the President of the United States?

Mr. B. What did you understand to be the purport of that letter? or what did you know to be the purport of it?

A. It was a kind of demand or petition to have the independence of his islands secured.

Mr. B. What was done on the part of Government with the memorials and statements in reference to my business, which were placed in the hands of the merchants?

A. A civil commission of the principal merchants was appointed by Government, in order to examine all the reports of the chambers of commerce.

Mr. Ricord. I wish the arbitrators to observe that there is higher evidence procurable, and I am entitled to have it produced. That was a matter which would appear in the minutes of the Government, and as Justice Story says, p. 529, "No Government will refuse to give certified copies of its records to be used in evidence."

Mr. B. In all my representations of my properties and privileges, had I stated the valuations which I fixed upon them?

A. Yes.

Mr. B. Was that valuation minutely illustrated in the detailed statement of profit?

A. It was.

Mr. B. Did the parties seem to be satisfied in the correctness of those representations of value?

A. Yes. I have seen the letter of introduction that Mr. Everett, the Minister in London, had addressed to Mr. Hilliard, your Minister in Belgium. [See Appendix—Doc. X.]

Mr. Did you take at that time a copy of that letter?

A. I did.

Mr. B. Is this the copy? [Copy produced.]

A. Yes, that is my writing.

Mr. B. I will file it with the court.

Mr. Ricord. Will you read it?

Mr. Brinsmade read the letter.

Mr. B. What circumstances interrupted my negotiations, and the movements instituted for securing the recognition?

A. The intelligence that Lord George Paulet had taken possession of the islands.

**Mr. B.** No, I beg your pardon. What circumstances interrupted our negotiations for the disposal of my properties?

**A.** That you had received intelligence of the arrival of Messrs. Richards and Haalilio in Louisiana.

**Mr. B.** Was it announced that they were on their way to Europe?

**A.** Yes.

**Mr. B.** Afterwards were the propositions renewed to me from the Belgian Company of Colonization?

**A.** They were, through me.

**Mr. B.** Did the Belgian Company of Colonization seem particularly solicitous to negotiate with me?

**A.** They were very anxious indeed, because they were afraid lest a second company should arise beside their own.

**Mr. B.** For what ground did I decline entertaining propositions from them at that time?

**A.** You expressed to me your desire to wait till Mr. Richards should arrive to consult him.

**Mr. B.** Was I recommended by you so to do before I further prosecuted my efforts to secure the recognition?

**A.** It was recommended by me and Mr. Bourson also, to suspend all measures till Mr. Richards should have arrived.

**Mr. B.** Did that recommendation come also from the Foreign Office?

**A.** I do not remember.

**Mr. B.** Did there seem at that time a fair prospect of the company being formed under the auspices of the Government?

**A.** So it appeared to me.

**Mr. B.** When did Mr. Richards and his colleagues arrive in Brussels?

**A.** In the early part of 1843.

**Mr. B.** Were you immediately made acquainted with them?

**A.** Yes, I waited for their arrival.

**Mr. B.** Where?

**A.** In the Hotel where you were.

**Mr. B.** What did they declare to you to be their object in visiting Brussels?

**A.** To carry out the plans that you had laid down.

**Mr. B.** In view of what special object?

**A.** For two different points; first that it would secure them the influence of the King of Belgium to obtain independence by France and England, and secondly, because they thought it was a capital plan to improve the civilization and develop the agricultural operations of the Sandwich Islands.

**Mr. B.** Who were Mr. Richards' colleagues?

**A.** Mr. Haalilio and Sir George Simpson.

**Mr. B.** Were they early presented to Court Hompesch?

A. The next morning after their arrival.

Mr. B. Had Count Hompesch expected them ?

A. Yes, because I was requested to invite them to dine next day.

Mr. B. Did you learn from them that they had been previously fully informed of what I had previously done in Brussels, in connection with the Belgian Company and also the Government ?

A. I do not know if they said so, but appeared so, because they knew everything about the business.

Mr. B. Was Count Hompesch in intimate relations with the King of the Belgians ?

A. He was.

Mr. B. What are the relations of the King of the Belgians to the Belgian Company of Colonization ?

A. He has given his patronage to that Company,—given his own seal, and is a share-holder.

Mr. B. Did Mr. Richards and his colleagues enter into communication with the Belgian Company with the express view of obtaining the influence of the King in furtherance of their objects in France and England ?

A. I believe they did.

Mr. B. By whom were the Commissioners presented to the King ?

A. By Count Hompesch ?

Mr. B. By whom were all the modifications of the Contract of 1841 proposed to the agents of the Sandwich Islands Commissioners ?

A. By the Company.

Mr. B. What report did the Commissioners make in your hearing of their interview with the King of the Belgians ?

A. They appeared to be very much pleased with their interview and said the King had promised them to do everything in his power to assist them.

Mr. B. In what respect ?

A. In securing the independence of the Islands.

Mr. B. They stated that ?

A. They stated that when they returned ; Mr. Richards and Sir George Simpson stated it.

Mr. B. Did you afterwards learn that the King had done any thing to further their objects ?

A. Yes, Mr. Bourson and Count Hompesch stated that the King had written to Mons. Guizot, and had prevailed upon the Queen to write to her father, Louis Phillippe.

Mr. B. Did you hear that statement made to Mr. Richards ?

A. I did.

Mr. Ricord. From whom did you hear it ?

A. From Mr. Bourson and Count Hompesch.

Mr. R. I should like to have Mr. Bourson sworn so that I might

expunge that. But what I mean is, in plain words, I object to that evidence.

Mr. Ten Eyck observed that Mr. Richards had testified to the same effect.

Mr. B. Were you present at an interview at the hotel de Belle Vue, between the S. I. Commissioners, Count Hompesch, and myself?

A. I was.

The Court was then adjourned to the 30th day of September, at 18 o'clock A. M.

#### ELEVENTH DAY.

#### *Mr. de Fiennes' Examination resumed.*

Witness begged to file the document appointing him solicitor to the Belgian Treasury Board, which had been alluded to in his evidence on the 9th instant. [See Appendix—Doc. V., Nos. 1 & 2.]

Mr. B. You have stated that you were present at an interview at the Hotel de Belle Vue, between Sir George Simpson, Mr Richards, Mr. Haalilio, Count de Hompesch, yourself and myself; what proposition was made to Count de Hompesch at that interview, by Sir George Simpson, relative to my business?

A. That instead of \$250,000 which you were to receive in shares, he should pay \$200,000 cash.

Mr. B. Was that proposition accepted by Count de Hompesch?

A. It was.

Mr. B. What guarantee did Count de Hompesch at the same time require from me that myself and partners should continue in the agency of the business?

A. That you should leave a certain amount of what you were to receive, as guarantee for the fidelity of your services in carrying out the business of the Company.

Mr. B. Will you now state as clearly as you can the mode by which the Belgian Company arrived at the value of the properties which I proposed to convey?

A. I was requested by the Company to examine all the deeds of the properties that you intended to convey. I had in my possession drawings and plans of your premises here. I had your statements of the revenue that you derived from them, and they gave me the belief that they represented a capital of \$50,000. That was for your properties in Honolulu. I had your leases of the lands of the Koloa plantations, and had your statements of the prices of the sugar produce, the quantities of sugar produce, and in support of which I had statements of Mr. Burnham and Mr. Hooper, who at that time had the direction of the establishment and I came to the conclusion that it represented a capital of \$200,000, at the rate of 8 per

cent. That the whole interest of all you possess at Koloa as represented by Mr. Hooper and Mr. Burnham, amounted to \$200,000.

Mr. B. Were those letters, making those statements left with the Company?

A. They were left with the Company.

Mr. B. Did you draw out your own calculations from the data that were furnished to confirm your convictions?

A. I did.

By the Board. How did you get at the value of \$50,000 for the property in Honolulu?

A. By the statements given me of the different incomes derived from the properties; so much for the wharfage, so much for the well, so much for storage, and I came to the conclusion that it was worth a capital of \$50,000.

Mr. B. Were those statements framed any time previous to my departure from here.

A. I gave you in a list of questions about those facts, and upon the statements that you furnished me, (not knowing whether it was made a long time previous,) I came to that conclusion.

By the Board. Were they certified by any Government officer here as being correct?

A. Not that I recollect. I do not believe they were.

Mr. B. Was any definite price attached or fixed for the value of the Contract of 1841?

A. I did not take the contract of 1841 into consideration at all in arriving at the value of the properties you intended to convey. I merely considered it as an inducement to make the bargain, as it afforded means to extend operations.

Mr. B. Will you state how the powers presented by Mr. Richards, or the sufficiency of them, were judged of when presented to the Company?

A. I examined those powers with the notary, and after having very closely examined them, we were fully satisfied that they contained a full power of attorney, sufficient to sign that contract.

Mr. B. Do you mean that you considered them sufficient by the laws of Belgium?

A. I do, and so did the notary.

Mr. B. What is the duty of a notary by the laws of Belgium under such circumstances?

A. To ascertain that all persons coming before him to pass any contract are duly authorized.

Mr. Ricord. I would observe that that is capable of being proved by the books, which is higher evidence than witnesses.—  
Witness evidence are merely matter of opinion.

Mr. B. Did Mr. Richards manifest any reluctance to leave his original powers of attorney?



A. A very great one.

Mr. B. Do you know why?

A. I don't know why, but he was obliged to leave it because the notary told him he could not be a party to the contract without doing so.

Mr. B. What created the necessity of his leaving it?

A. Because the notary must show that the parties for whom he passes a contract are duly authorized.

Mr. B. Does the law make it necessary?

A. Yes.

Mr. Ricord. We will show that also by the books.

Mr. B. Do you know if anything was said by Mr. Richards or either of his colleagues there of the necessity that the acts passed there should be ratified by the King?

A. I do not.

Mr. B. Was any such idea suggested to your mind in the whole negotiation?

A. No.

Mr. B. Were you present at all the interviews between the Hawaiian Commissioners and the officers of the Belgian Company, and acquainted with each step in the progress of negotiation?

A. I believe I was.

Mr. B. Were you instructed by the Company to assist in reducing the contract to the forms and terms in which it was signed?

A. I was.

Mr. B. Do you believe that you understood perfectly the views of all the parties in entering into the contract?

A. I think I did.

Mr. B. Was it drawn out originally in your own hand writing by you?

A. It was.

Mr. B. At whose request was that labor performed by you?

A. At the request of Count de Hompesch and Mr. Obert.

Mr. B. Were you very much with Mr. Richards, or intimate with him whilst you were assisting to draw out that contract?

A. Yes, I was a good deal.

Mr. B. Were you as intimately acquainted with his views as you were with the views of the other parties?

A. I believe I was.

Mr. Ten Eyck here expressed a wish to see the rules of organization, and Mr. Ricord stated that he had filed them with the court as evidence on his side. Mr. Ten Eyck said they were as good evidence on one side as they were on the other; he had merely wished to refer to them.

Mr. B. Do you know if the Council General of the Belgian Company ratified the contract entered into on the 17th May, 1843?

A. Yes, it did.

Mr. B. How?

A. Because 11 months afterwards—

Mr. Ricord. I object to the evidence because the act must be a public one, and higher evidence of it could be adduced.

Mr. Ten Eyck said they merely asked of the witness whether he knew a certain fact, and Mr. De Fiennes merely testified to the fact.

Mr. Ricord said he was not allowed to do so; he did not think it looked well for answers to be taken to questions that had been objected to. It looked ill.

Mr. Ten Eyck said the question was, did witness know that the contract was ratified? If Mr. Ricord in cross-questioning him could prove that he had no ground for his knowledge, or did not come by it honestly, or in a satisfactory way, his evidence would have no weight.

Mr. Ricord observed that in this country such a resolution as the one alluded to would exist in writing, and Belgium must be infinitely behind Hawaii if it did not exist in writing there. It was an older country. From the nature of the thing it must have been in writing, to say that it was merely verbal in Europe would be preposterous.

Mr. B. waived the question.

Mr. B. Do you know anything of the urgency of Mr. Richards that I should write to my partners to have a return cargo secured for the first ship?

A. Yes.

Mr. B. What is your knowledge on that point?

A. He stated himself, in my presence, that you had better write again to secure a return cargo, and that he should take care to send the letter.

Mr. B. Do you know of any special effort to get that letter forwarded in season for the West Indian mail?

A. I know that it was rather late to have them forwarded to London in time for the mail, and I believe that some urgent mode was adopted to try to get them to London in time for the mail.

Mr. B. Do you know of any reason for the delay of the Belgian Company in their execution of the Contract of May 17, 1843?

A. I do.

Mr. B. Will you state those reasons so far as you know them?

A. The first was the knowledge that Lord George Paulet had taken possession of the Islands; and when the news came that the islands were restored, Mr. Obert stated to me repeatedly that he was very urgent to wait a little to re-establish the confidence of the public, which had been greatly shaken by that fact. A second motive was, that at that time the Belgian Company had some difficulties to settle in connection in their establishment at Guatemala, and wished to have *that finished and to have clean hands before they began.* A third

motive was, that the contract required that subscriptions should be opened in France and England, and you were to go to those two countries to provide for it before any thing could be definitely done.

Mr. B. Do you recollect when the intelligence reached Europe of the proceedings of Lord George Paulet—about the time ?

A. I do not recollect exactly.

Mr. B. Do you recollect how much time they were delayed after receiving that intelligence, before they felt authorized by Mr. Richards to proceed in examination of the contracts?

A. They were delayed a good time, but I can't state how long exactly, because Mr. Richards requested that nothing should be done until the recognition should have taken place by France and England.

Mr. B. Do you recollect the time when Haalilio and myself arrived at Brussels the last time? How long after the date of the Contract of 17th May, 1843?

A. I do not recollect exactly how long—I cannot specify.

Mr. B. Do you know what was said to the commissioners by Count de Hompesch in regard to the character of the persons that they would be able to send to this country to meet the wants of the community?

A. Count Hompesch stated to Mr. Richards that he attached a great value to this business, because in regard to their operations at Guatemala it was stipulated that they could send nothing but Catholics, and that they had a good many Protestants that they were obliged to refuse because they did not know where to occupy them, and that this was just the place to send them to.

Mr. B. What do you know of the character of those Germans who offered themselves to the employer to the company in such situations as they would be required for?

A. I believe that the character of those German families is generally known. They are men possessing some little property—they sell out at home in order to go and try their fortunes somewhere else, and buy tracts of land where they can establish themselves. Hearing that a good business could be obtained in the Sandwich Islands, a great number of applications were made to the Belgian Company.

Mr. B. What was the effect of the Belgian Contract upon the stock of the Belgian Company of Colonization?

A. The effect of the fact of their having entered into that contract was, that the stock rose amazingly. The nominal price of shares was 1,000 francs, they had sometimes risen to 5 or 6,000 francs, but then they rose to 10,000 francs; and though I had many applications to buy shares I could not obtain one of them.

Mr. B. Did the members of the Council General of the Belgian Company who held shares, hold on to their shares and fix a higher value to them in consequence of the Belgian Contract?

A. Nobody but members of the company possess shares.

Mr. B. Did they fix an augmented value to their shares in consequence of this Belgian Contract?

A. The fact shows that they attached a greater value to their shares, because they would not sell—I could not buy them at the rate of 10,000 francs each.

By the Board. How do you know that the rise in the price of shares was caused by the Belgian Contract?

A. I know it because several members came to me and told me that such was the case.

Mr. Ricord. I do not object to this evidence; it can, however, be better proved by the books of the company.

Mr. B. What do you know of the disposition and purpose of the Belgian Company to carry out that contract up to the time you left Belgium?

A. I know that they were very sanguine about it. Mr. Obert repeated several times that he attached more value to it than any other transaction of the company.

Mr. Ricord. I object to the testimony of what Mr. Obert had said. I wish the arbitrators to abide by the rule adopted at the last sitting.

Mr. Ten Eyck. The thing is this—Mr. De Fiennes was on intimate terms with the Belgian Company, he was often in their office, he knew their views and feelings, and he was now asked whether, in his opinion, that company intended to carry out that contract. I consider that a perfectly proper question. The witness was not asked what Mr. Obert had said, but what was his own impressions on a certain point, and merely gave what Mr. Obert had said as one of the grounds upon which he had formed his estimate.

Mr. B. When did you arrive at the Sandwich Islands?

A. To answer the former question. They were very sanguine about it, and Mr. Obert stated that he attached more value to that operation than any other one in hand.

Mr. Ten Eyck. Do you believe they meant to carry out the contract, from your conversation with them, and other sources?

A. I did believe so, most decidedly.

Mr. B. When did you arrive here?

A. In February, 1845.

Mr. B. Were your opinions of the terms and validity of the Belgian Contract sought by this Government from you?

A. Yes.

Mr. B. Did you furnish any opinion in writing?

A. I might have stated very briefly in some letters, without any argumentation, that my firm belief was, that that contract was good and binding.

Mr. B. Did you give any reasons here for expecting that a ship

would be early sent off from Belgium from what you knew before you left?

A. I expected at any moment to see a ship arrive, and that is the reason that I used all my endeavors to engage this Government to wait until they should hear from you.

Mr. B. To await for what?

A. To delay selling the property of Ladd & Co. on execution.

Mr. B. What reasons did you assign for delay?

A. That they were engaged and bound by the Belgian Contract, and would be exposed to damages if they acted in violation of it.

Mr. B. Did you express any anxiety that we might be preserved in our ability to execute it on our part?

A. I did; and that is the reason why the protests were entered when the sale was advertised.

Mr. B. Were you appointed by this Government to examine the properties at Koloa?

A. Yes.

Mr. B. For what purpose?

A. To examine the properties, and I went over there —

Mr. B. But before you went what verbal instructions had you in reference to your commission?

A. The instructions were to make out a full report in detail of all the properties there. Dr. Judd told me to make out that report.

Mr. Ricord. The instructions were given in writing, and I would like to have them introduced.

Mr. B. I asked what were the verbal instructions given before he went away?

A. Dr. Judd stated that I should make that report and send it immediately to Belgium, and the next day stated that it would be better to send it to this Government.

Mr. B. Did he give you any intimation of what you would probably find to be the value?

A. He cautioned me not to be sanguine or misled by appearances.

By the Board. You said that he ordered you to send it to Belgium. Was it to be sent to the company, or where?

A. To the company.

Mr. B. Were any facilities afforded you by the Government or its agents for arriving at a proper statement of the value of the properties?

A. I had letters of introduction given me to the principal residents, that I might consult with them in order to arrive at a proper statement of the value of the properties.

Mr. B. Did you avail yourself of those facilities in making your investigations?

A. I did partly, with the people that I thought could give me the best information

Mr. B. Did you make any report on the subject?

A. I made a report in detail, and was very much gratified to find that our statement in Belgium came so near the real amount. I believe in my report handed into Government I valued the property higher than I did in Brussels.

By the Board. Did you come out here as agent to the company, or employed by it?

A. No.

Mr. Ten Eyck. Will you tell us what you did at Koloa?

A. I went to Mr. Burnham and asked him to show me all the fields, and to give me a complete statement of his expenses by items, that I might see what the expenditures for the year were. I asked him what quantity of sugar was produced in gross, and the quantity that he expected to produce from the cane not cut; and making calculations we found out that the properties would realize \$210,000, and without the molasses would realize \$10,000 that year, which calculation afterwards turned out to be correct.

Mr. B. Can you furnish a copy of that report which you made?

A. I can make a copy from my minutes.

Mr. Ricord. I will hand in the document in witnesses own handwriting, together with his instructions. [See Appendix—Doc. U. 1, 2 and 3.]

By the Board. By whose authority did you do this?

A. By Dr. Judd's. I was requested by him to go over there and examine the property. I was acting for Mr. Judd.

Mr. Ten Eyck. Were you at that time in the employ of this Government?

A. I was.

Mr. T. E. Did Dr. Judd at that time state to you any reason why he wanted you to make that examination?

A. No. Government wanted to know the value of it.

By the Board. Were you an officer of this Government?

A. I was not an officer of Government, but I had a waiting salary to receive a definite office when Government should be organized.

Mr. Ricord. I am quite ready to admit that Mr. De Fiennes had got money out of Government.

Mr. T. E. You say that Dr. Judd told you to make that examination. Did you yourself go all over that plantation and make an examination yourself of the property and sugar, &c. &c.?

A. I did.

Mr. T. E. What is Mr. Burnham?

A. He is manager of the mill and superintendant of the estate. Then there was Mr. Lindsey who had charge of a portion of the fields, and Mr. Toby who had charge of another part. I took down their calculations for a guide for myself, and from their statements I made my statement.

Mr. T. E. Did you three go over the estate?

A. We did.

Mr. T. E. You then had your own observations as well as theirs?

A. Yes.

Mr. T. E. What was the value?

A. It was about \$200,000.

Mr. Ricord. All this will be found in the report, which mentions every thing that he got: a horse that he got—a callabash that he measured—a part of the mill, and all particulars.

Mr. T. E. Where is that report?

A. It is in the hands of Government.

Mr. T. E. Have you a copy of it?

A. I can make a copy.

Mr. Ricord. I have said I will hand in the original. I have not got it here, not having expected that it would be wanted, but it may be entered as having been filed. [See Appendix—Doc. V. 4.]

Mr. B. There is one question I have omitted. I want to inquire do you know the part I took in the correspondence between the Commissioners and the Belgian Government?

A. I can but repeat what Mr. Richards said, that you did the whole, and that I translated it.

Mr. B. Did you find in your examinations at Koloa, and in your observations of the extent of properties here, that the representations which I had made in Belgium were faithful and true?

A. I did. I have stated so before.

Mr. B. What is the character and standing for respectability and pecuniary responsibility of the members of the Belgian Company of Colonization, so far as you know of their public character?

A. Most of them are men of large property, and of the highest nobility in Belgium.

Mr. B. Are they reputed men of wealth, with money to invest in operations of this kind?

A. Yes, most undoubtedly. There are individuals among them who could carry on the business alone.

Mr. B. From your knowledge of those men,—their abilities and any dispositions in reference to the Belgian Contract, do you believe that if the properties which I conveyed them were in the situation in which they were when the contract was entered into, they would now be willing to carry out that contract?

A. I most assuredly believe so.

Mr. B. Do you believe that the fact that those properties have been taken from our possession, constitute a sufficient reason for the Companies' not carrying out the contract?

A. I think so, because in my mind it must destroy all their confidence.

Mr. B. In what?

A. In this Government, and the protection they could get here.

Mr. B. Did they express to you and me their fears that their property when invested here might not be protected?

A. They very often expressed their fears, even when Mr. Richards was there.

Mr. B. By what assurances were these fears dispelled?

A. By the assurance that the Islands should be independent.

Mr. B. Who gave them assurances as regards the stability and integrity of the Government?

A. You did principally?

Mr. B. Did Mr. Richards give them assurances that they might confide in the integrity of the Government?

A. He sustained your statements.

By the Board. What was the cause of their fears?

A. Because they did not know about the country; it was a country they were unacquainted with; they knew nothing about a Government in the Sandwich Islands, which appeared to them a country not yet civilized.

Mr. Brinsmade said he would file the contract between himself and the members of the Belgian Company, by which they engaged to pay him cash instead of money according to the terms of the Belgian Contract, in shares; he would file that in connection to the Belgian Contract. [See Appendix—Doc. T.]

*Cross-examination by Mr. Ricord.*

Mr. R. Have you ever been regularly admitted to practice as attorney or advocate in Brussels?

A. Certainly. I think I have given proof of it.

Mr. R. Did you receive a diploma?

A. Yes.

Mr. R. What is the course of admission to the bar in Belgium?

A. You must first have a diploma from the University, after you have passed all your examinations through the different branches of the laws. When you have that diploma, then you must have three years practice in a pleading lawyer's office, before you are admitted into the courts.

Mr. Ten Eyck. I don't want to object to this, but it could be proved by books.

Mr. R. I asked to see if he knows about the matter, besides, cross-examination is different in some respects, greater latitude being allowed.

Mr. T. E. That is true, but this is all about law.

Mr. R. These are the laws of the land, are they not?

A. Yes, they are the special rules of the court. First, you must be Bachelor in the science of letters before you are admitted to study law. Then you must study the principles of the Roman



and obtain the grade of candidate at law. Then you study the acts, and the French law, and the code civile. Then you study criminal law, and pass your examinations, and then you obtain the grade of Doctor of Laws. After that you must—

T. E. Will Mr. Ricord show the object of this?

R. To see if he knows the course.

T. E. Then I shall object.

R. I have a right to cross-examine a witness that I objected to at which objection was overruled. I claim my right to cross-examine him. I want him now to show the process by which he is at his diploma.

T. E. Then I shall object.

De Fiennes. I might give Mr. Ricord a copy of the thesis in Latin, which I defended in public.

R. That will be very satisfactory, — I am not ignorant of myself. To which of the courts of Brussels do you belong?

To both, because according to the laws of Belgium when you are a Doctor of Law, you may plead in all the courts.

R. Were you employed in Brussels by Mr. Brinsmade as counsel?

I have done several things for him.

R. Did he employ you as counsel?

Yes, in several things disconnected with the Belgian Company, several in connection with it too.

R. Did he pay you a fee whilst he was in Brussels?

I do not know whether I must answer that.

R. I insist on knowing whether he paid you a fee. It appears that the counsel of Mr. Brinsmade in Belgium is introduced as a witness about things that happened there.

I have not yet received my fees, because I have not asked for them.

R. Were you to have received fees?

I was to have received fees.

R. Are they still due you?

They are not due.

R. Why not?

Because I have not asked for them.

R. Did you make any stipulation about fees?

No, I did not.

R. Who introduced you to this country,—who did you bring you of introduction from?

From Mr. Brinsmade.

R. Did Mr. Brinsmade hold out inducements to you while you were in Belgium, for coming out to this country?

I don't see I am obliged to answer.

Mr. R. I ask the question, gentlemen. I would like to have the question recorded, and that the witness refuses to answer.

A. If the arbitrators think that I must answer, I will.

Mr. R. My question was, did Mr. Brinsmade hold out any inducements to you to come to the Sandwich Islands while you were in Brussels?

By the Board. We think you ought to answer.

A. Mr. Brinsmade held out inducements to me, for Dr. Judd had written to Mr. Brinsmade that they wanted a legal gentleman here, and great inducements were held out. When I came I found the place occupied by John Ricord.

Mr. R. Did Mr. Brinsmade retain you as legal counsel when you should have arrived in the Sandwich Islands?

A. No, he did not.

Mr. R. Did you ever say to me that you had expectations, in case the Belgian Contract went into operation?

A. I believe I did, and I explained those expectations. I told you that I had the expectation of being appointed the Belgian consul here.

Mr. R. Did you ever say that you had an interest in the Belgian Company in case it went into effect here?

A. I don't think I did, and I could not have said so.

Mr. R. Did you ever say to me, that you could not act impartially in the affairs of Ladd & Co. in connection with the Government?

A. Yes, because I had several times given an opinion on those matters to this Government, and as an honest judge I could not sit on a case on which I had previously given an opinion.

Mr. R. Upon what case had you given your opinion?

A. Upon the disposition of lands, &c.

Mr. R. What part did you act in the negotiation of the Belgian Contract?

A. What part? I had been requested by Mr. Obert to examine the business that Mr. Brinsmade proposed to them.

Mr. R. Did you act also on the part of Mr. Brinsmade?

A. I did several things for, him explained it to him, but I was professionally employed by the Belgian Company.

Mr. R. Did you advocate Mr. Brinsmade's views with the Belgian Company?

A. I could not serve the two parties at once,—that was impossible. I could propose his views, and if they concurred with their views, there was an end of it, but I never originated any difficulty.

Mr. R. Did you use any collateral influence with Mr. Obert in favor of Mr. Brinsmade?

A. None whatsoever.

Mr. R. Do you claim acquaintance with Count Hompesch?

A. I do.

Mr. R. Of what nature?

A. The nature? Because, I had done some business for the Belgian Company, and in this particular case I was requested by Obert to transact the business, and in the course of transacting it I had several interviews with Count Hompesch, whom I had several times met before on other business.

Mr. R. Had you an intimate acquaintance with Count Hompesch, such a one as would justify you to say, you knew his private views?

A. Not his private in all things, but his private views in this particular business.

Mr. R. Do you claim to be personally intimate with Mr. Obert?

A. I do.

Mr. R. You have stated that Mr. Brinsmade, in all his negotiations, made the independence of the Islands one of the terms. How do you know?

A. Because he stated it to Mr. Obert, and Count Hompesch, and to me.

Mr. R. You also stated that you had reason to know that the King of the Belgians knew all of Mr. Brinsmade's motives in connection with the Belgian Contract; what reasons have you for that assertion?

A. First the views that were expressed by the King, in his own speech on opening the legislative chambers. I knew further his intentions, because I myself heard Mr. Nothomb express them to Mr. Bourson, when he stated that the Company was a scheme of the King's own, and he wished to gratify the King by carrying it into operation.

Mr. R. You also stated that some negotiations were interrupted by Mr. Richards' arrival in the United States; what negotiations?

A. Negotiations going on with the Government. At that time the negotiations were with Government, because I had received a letter from Mr. Brinsmade stating that he had received a letter from Mr. Nothomb that the King was going to Paris, and that he might be called for at any moment and that he had better make ready for a trip to Paris, and at that time he heard the news of Mr. Richards and Haalilio, and of course the general opinion was to wait until they arrived.

Mr. R. The general opinion of whom?

A. Of Mr. Bourson and myself.

Mr. R. How do you know that those negotiations were interrupted by the arrival of Mr. Richards?

A. Because the King himself had notice that the commissioners were arrived, and it would have appeared ridiculous that Mr. Brinsmade should have continued those negotiations while the commissioners were at hand.

Mr. R. It was an inference?

A. It was ridiculous to go further unless all parties were present. We advised Mr. Brinsmade to wait and not to proceed any further until they arrived.

Mr. R. To what point had they got?

A. That I don't know. I can't say how far they had progressed. We only know that there was a promise that they would attend to it, and that is all. What was done I do not know.

Mr. R. How did the intelligence of Mr. Richards' and Mr. Haalilio's having arrived in the United States, reach Brussels?

A. By newspaper.

Mr. R. What newspaper?

A. I don't know; it was printed in the United States.

Mr. R. Who had it?

A. Mr. Brinsmade.

Mr. R. How was it stated?

A. It was stated that Messrs. Richards and Haalilio, Commissioners from the Sandwich Islands, had arrived at Louisiana, I believe.

Mr. R. How do you know Mr. De Fiennes, what it was that interrupted the negotiation that you speak of; how do you know it was their arrival, or something else?

A. I don't know that there was anything beside. The fact is, we advised it, and it was done; I don't know of any other reason.

Mr. R. Was the interview at which Sir George Simpson made a proposition to Count Hompesch of \$200,000 cash, instead of \$250,000 in shares, had before or after the signing of the contract?

A. Before signing the contract.

Mr. R. Will you please Mr. De Fiennes, to describe to us how corporate bodies take resolutions in Belgium,—how they transact?

A. There are different kinds of corporate bodies;—the Belgian Company is one. That Company has a meeting every week or month of the directors. They come to resolutions, which are entered by the Secretary in the books.

Mr. R. Do they take a vote on every distinct proposition?

A. They sometimes give powers to some of the members to do a certain business, and he comes and reports it, and it is entered on the books.

Mr. R. If approved of or disapproved?

A. They never disapprove, because what he does is admitted.

Mr. R. But if they reserve to themselves the right of ratification, do they distinctly ratify or disallow his acts afterwards?

A. They do.

Mr. R. You stated that there were statements of Mr. Brinsmade's handed over to you in order to arrive at the value of the property,—were those statements?

A. Upon the value of the property, and the rent and income which they produced. I had given a series of questions for Mr. Brinsmade to answer.

Mr. R. Were there any of Mr. Ladd's among them?

A. I don't think there were.

Mr. R. Any of Mr Hooper's?

A. Yes, a very long letter of Mr. Hooper's, giving full particulars about the estate at Koloa.

Mr. R. Did you give your opinion to the Belgian Company in writing?

A. I made a report to them in writing.

Mr. R. Did they take any other advice besides your own upon the value and conditions of that property?

A. I believe not; nobody else was consulted but Mr. Obert, Mr. Binckum and myself.

Mr. R. Was there any resolution taken upon the extent of Mr. Richards's powers or his qualifications?

A. No, not in the Company. That power was handed to the notary, who examined it with me, and we came to the conclusion that it was satisfactory.

Mr. R. Did you make a report of that?

A. No; because that was the notary's business to see that the power was satisfactory.

Mr. R. You said that you did not know that anything was said of the necessity of the ratification of the Belgian Contract here?

A. I don't think anything had been said, because if it had, it would have struck my mind, being of opinion that ratification was not necessary.

Mr. R. You also stated that the news of Lord George Paulet's taking the Islands interrupted the negotiations. How do you know that?

A. Because I was just the party transacting the business, and all was done through me, and both parties said they would go no further; there was an end to the business.

Mr. R. Where did you get your authority for saying that Mr. Brinsmade was going to France and England to get subscriptions to the Belgian stock preparatory to its going into execution?

A. I stated myself to the company that it was necessary to open subscriptions there; somebody must go at all events, or it must be done by letter.

Mr. R. You said there were three reasons why the contract was disrupted. One was that Mr. Brinsmade was going to England and France to get subscriptions?

A. I recollect that it was decided that Mr. Brinsmade should go, because he was the best to give the proper information.

**Mr. R.** Would the books of the Belgian Company show whether the stock rose in consequence of this new contract?

**A.** I believe not; the books have nothing to do with it.

**Mr. R.** Do they not sell shares?

**A.** These are shares belonging to the members. It may be accidentally mentioned, but there is no necessity for it.

**Mr. R.** Is there no record taken of the transfer of stock?

**A.** No. The only thing is that it must be endorsed, saying that it belongs to such a person, but it does not say anything about the value, and furthermore, it is not mentioned upon the stock the price it is sold for. I have had numbers of these shares in my hands.—The stock merely represents a nominal value of 1000 f.—the price given is not mentioned.

**Mr. R.** Are there no stock brokers?

**A.** There are several, but these transactions are not done by stock brokers. I do not know of one share having been sold by a stock broker.

**Mr. R.** What particular means had you of knowing that the Belgian Company were duly intending to carry out the contract?

**A.** Because Mr. Obert was very sanguine about it, and stated repeatedly to me in company with Mr. Creps, the ship broker, that it was the best business they ever had had. These were my means of knowing. Several other members talked to me also.

**Mr. R.** Why did they not?

**A.** I have told the reason why they intended to wait.

**Mr. R.** Why did not they carry out the contract of the 17th of May, 1843?

**A.** Several members were very angry because it was delayed so long. Baron Von Lockhurst came repeatedly to my house, and was very anxious to see it go into operation.

**Mr. R.** You testified that you had written letters giving it as your opinion that the contract was binding,—where are those letters?

**A.** In your possession I believe; I think so—I am not certain.

**Mr. R.** Did any body assist you in making the report on the Koloa property in 1845? did any body give you ideas?

**A.** I was only assisted by Mr. Burnham, and Mr. McClurg, who was then at Kauai and corrected my English.

**Mr. R.** Did Mr. Ladd have any thing to do with it, or Mr. Hooper?

**A.** No.

**Mr. R.** What was your object in going to Koloa in 1845?

**A.** I do not know.

**Mr. R.** Was it not that there had been a proposition made by Ladd & Co. to sell for \$147,000?

**A.** I never heard of it.

Mr. R. Are you acquainted with the resources of the Belgian Company—are they good for \$200,000?

A. Yes, and I believe for a little more too.

Mr. R. If they violated a contract they would be good for that?

A. Yes, one man might pay that very easily.

Mr. R. Did you ever tell any one here, shortly after your arrival, any reasons why the Belgian Company did not carry out the contract, and why it could not go into effect?

A. I do not recollect any thing of the kind.

Mr. R. Did you ever hear yourself called, shortly after your arrival here, the agent of the Belgian Company?

A. Yes, and it amused me very much.

Mr. R. Did you ever contradict it?

A. Yes, to my friends.

Mr. R. Who so introduced you?

A. Mr. Pelly, to my great astonishment.

Mr. R. To whom?

A. To all the people in the streets.

Mr. R. Were you so introduced to Mr. Wyllie?

A. I forget.

Mr. R. Who introduced you to Mr. Wyllie?

A. I cannot say who, or where I was introduced to Mr. Wyllie.

Mr. R. I will introduce Mr. De Fiennes' Report, before alluded to, together with other documents explanatory of it. [See App.—Doc. U. 4.]

Mr. B. I wish permission to ask one more question of Mr. De Fiennes. Did you (to witness) find the answers I gave to your series of questions in Belgium, to be correct upon the examination you made here?

A. I have already answered that question, I think; but I did find them to be correct.

Mr. B. At the time you went to Koloa under the instructions of Dr. Judd, were you on as intimate relations with the officers of Government as with Mr. Hooper and Mr. Ladd?

A. I was.

By the Board. Were you the only solicitor of the Belgian Company before you knew Mr. Brinsmade?

A. I was at that time.

By the Board. Were you appointed before his arrival?

A. Yes.

Mr. B. I would wish to inquire of Mr. De Fiennes the character of the two gentlemen with whom he was associated in managing the affairs of the treasury?

Mr. Ricord. I do not wish exactly to object, but the rule of law is that the character of absent parties shall not be inquired into.

Mr. B. Well, his professional standing?

By the Board. We decide according to the rule, that the character of persons out of court shall not be introduced.

Mr. Ten Eyck. I have understood from a paper which has been introduced, that Mr. De Fiennes was associated with certain other gentlemen, and to show their standing would show that of Mr. De Fiennes.

Mr. Ricord. Mr. De Fiennes and his associates ought to be taken on the prima facie evidence contained in that paper, as men of good character, from the fact of their having been admitted to the Belgian bar.

Mr. Brinsmade. I have no more to ask Mr. De Fiennes. As Mr. Stevens is here I would like to address him two or three questions.

Mr. Ricord. Has he been sworn?

Mr. B. I believe so. Have you been sworn Mr. Stephens?

Mr. Stevens. Yes.

Mr. B. By what conveyance did you arrive at the Sandwich Islands?

A. In the ship Montreal from Boston.

Mr. B. Who were your fellow passengers?

A. There were the two Mr. Cummins, Mr. Haalilio, Mr. Richards, Mr. Anthon, Mr. Brown and Mr. Christie.

Mr. B. In what capacity did you come out here?

A. As the U. S. Naval Store-Keeper.

Mr. B. Were you on intimate terms in your intercourse with Mr. Richards?

A. No, sir, not in any great degree of intimacy.

Mr. B. But were you on friendly terms?

A. Yes, I was on friendly terms with him.

Mr. B. Did you hear Mr. Richards speak of me in connexion with his mission to Europe?

A. Yes, sir. I hardly remember any of the conversation which passed—I can only give you my recollections.

Mr. Ricord. This is hearsay testimony. A previous witness on the other side has been examined on this very point. If you want to impeach his testimony, I have no objection to your examining Mr. Stevens.

Mr. B. That is not my object. Mr. Richards is a party with whom I have been associated in the Belgian Contract, and also as his friend on his mission abroad, and I wished to ask if Mr. Richards spoke of me as having afforded him assistance in Europe. (To the witness.) Did you hear Mr. Richards speak of the services which I had rendered him in furtherance of his objects in Europe?

A. I heard him say that you had been of great service to him.

Mr. B. In what respect—what did you understand?

A. In his negotiations for the independence of the islands.



Mr. Ricord. If this testimony is intended to undo what Mr. Richards said, I have no objection to make. But if it be intended to supply what he might have said, I would prefer your recalling him.

Mr. B. The witness is yours.

Mr. Ricord. I have no questions to ask Mr. Stevens.

The court was then adjourned till Friday, the 2d of October, at 10 o'clock, A. M.

#### TWELFTH DAY.

Monday, 5th October, 1845.

The Court having been re-adjourned on the 2d instant, in consequence of the absence of Mr. Ten Eyck, convened this day according to appointment at the hour of 10 o'clock.

*Mr. Milo Calkin called to the stand.*

By the Board. Have you been sworn Mr. Calkin?

A. Yes, I have.

Mr. Ten Eyck. When did you come to the Sandwich Islands to reside?

A. I arrived in Lahaina in November, 1836.

Mr. T. E. Have you resided here ever since?

A. Yes, sir.

Mr. T. E. Have you resided in Honolulu?

A. I commenced in the employ of Messrs. Ladd & Co. in June, 1837.

Mr. T. E. Were you in their employ?

A. Yes, sir.

Mr. T. E. As clerk?

A. As clerk.

Mr. T. E. How long did you remain with them?

A. I remained until January, 1842.

Mr. T. E. Were you acquainted with Mr. Farnham who was here about that time?

A. I became acquainted with him in the fall of 1839.

Mr. T. E. What was he?

A. He reported himself to be a lawyer.

Mr. T. E. Do you remember when he came here?

A. About the 15th of December.

Mr. T. E. In what year?

A. In 1839.

Mr. T. E. You heard Mr. Richards' testimony in reference to Mr. Farnham, is that the same person?

A. Yes, the same person.

Mr. T. E. Did you have any engagement with him concerning a lease of a tract of land which you expected to obtain?

A. Yes, sir, a verbal agreement, but none in writing.

Mr. T. E. What was the nature of it?

A. I think I was at that time in negotiation with the Government, through Mr. Richards, to obtain a piece of land in the district of Wahiawa, in Kauai, five miles in breadth, and fifteen miles reaching inland.

Mr. T. E. Was he to be interested with you in leasing that land?

A. It was agreed between us verbally, that if he could get a power from the King to enable him to dispose of the lease in the U. States, he should be interested with me.

Mr. T. E. Did he get that authority?

A. He did, as he stated to me: I only know what he said.

Mr. T. E. You heard Mr. Richards' testimony that he had a power of attorney.

A. Mr. Richards mentioned to me that he had a power of attorney, but I never saw it. I heard Mr. Richards testify to the fact.

Mr. T. E. Were you aided by any one in endeavoring to obtain those lands from the Government?

A. By Mr. Richards.

Mr. T. E. Did he know what were your objects?

A. I think he did.

Mr. T. E. Did you explain them to him?

A. I did explain them to him.

Mr. T. E. What were your objects?

A. My object was to obtain a lease of that tract of land, and to interest the capitalists in the United States to invest their funds in getting up a joint-stock company for the cultivation of those lands, and for carrying on agricultural pursuits. There were to be a mill and a school upon the land for the improvement of the natives.

Mr. T. E. Did you explain that object particularly to Mr. Richards?

A. Yes, sir.

Mr. T. E. Did you have any conversation with any one else on that subject?

A. I did. I made a confidant of Mr. Brinsmade, one of the partners of Ladd & Co. I consulted freely with him, and got advice from him.

Mr. T. E. With any one else?

A. With no else excepting Mr. Farnham. Mr. Brinsmade, Mr. Farnham and myself were the only persons knowing to the plan excepting Dr. Wood; I did converse with him on the subject, but he was not fully acquainted with it.

Mr. T. E. Was any allusion made by any person at that time in reference to the independence of these islands in getting up this joint-stock company for the benefit of the islands.

A. Yes, the question immediately arose in the mind of Mr. Farnham and myself, whether such an object could be sustained under the

ate state of the Government. Capt. La Place's operations have just taken place, it was suggested by Mr. Brinsmade that it would be necessary, in order to carry out our objects on a large scale, to secure the independence of the islands guaranteed by the powers: that is, say, by England, France and the United States. That there would be security for foreign capitalists before they would invest their money in this country.

r. T. E. Was Mr. Richards aware of those suggestions made to you by Mr. Brinsmade—did you speak to him about them?

. I think that Mr. Farnham visited Maui for that purpose, and for the purpose of getting a power of attorney.

r. T. E. What did he propose to do with the power of attorney?

. To dispose of the lands for which I was to get a lease, and to secure the independence of the islands recognised.

r. T. E. I mean in getting that power of attorney, what power did he expect to exercise with it—did he expect to enter into an agreement for the disposal of the lease?

. Yes, he expected to enter into a contract to dispose of any lands for which I might get a lease.

r. T. E. Did you subsequently visit Lahaina?

. I did.

r. T. E. Did you meet with any person there on this subject?

. I met with Mr. Richards, the King, and the Premier.

r. T. E. Was this matter represented by you, or by Mr. Richards for you, to the King and Premier.

. By Mr. Richards for me.

r. T. E. Did Mr. Richards urge the project which you and Mr. Farnham started, and which you have mentioned, upon the favorable consideration of the King and Premier.

. He did; but I cannot say that Mr. Farnham had given Mr. Richards to fully understand the scope of our argument.

r. T. E. Did Mr. Richards urge on the King the propriety of giving you a lease of land that Mr. Farnham might go to the United States and interest foreigners with their capital, for the purpose of securing the aid of those foreigners and their influence in procuring the recognition of the independence of the Sandwich Islands by the United States; and was that the object you had in view, and which you explained to Mr. Richards; and did he so understand it, and explain it to the King and Premier?

. That is how I understood it.

r. T. E. Did the King and Premier think favorably of that object and encourage you to think that they would grant the lease?

. Ricord. I would like to remark that these questions are very important, you merely require yes or no.

Mr. T. E. I will change the mode, Mr. Ricord. (To the witness.) In what capacity was Mr. Richards at that time?

A. In Government.

Mr. T. E. In what capacity?

A. Interpreter and teacher of the chiefs.

Mr. T. E. Did you subsequently obtain a lease?

A. I did for another tract of land—not for that one.

Mr. T. E. Did you abandon the project of getting that land?

A. I did. Mr. Hooper had gone to the United States with the lease of a mill site and other privileges near the plantation at Kani. It was decided best to wait the result of his negotiations in the United States, and I finally withdrew my application, having assurances from Messrs. Ladd & Co., my employers, that they were about to enter into some such engagements, and I should be interested with themselves; so I decided to withdraw mine and join them in whatever projects they might undertake.

Mr. T. E. How did Mr. Richards look upon this project?

A. Very favorably.

Mr. T. E. Did he seem much pleased with it?

A. He did. He gave me the names of merchants in New York whom he thought would be glad to be interested?

Mr. T. E. What argument did he use with the King and chiefs to favor this object?

A. I drew up a bond for a lease, in which I gave an outline of the plan I had in view, which plan respected the rights of all the natives holding land within the territory, guaranteed the building of churches and schools, and for the support of a teacher and physician at the expense of the company, and other things of the like nature for the benefit of the natives.

Mr. T. E. What argument was used by Mr. Richards?

A. As I understood Mr. Richards, that it would introduce capital, employ natives, and bring out the resources of the islands which were lying idle.

Mr. T. E. Was any thing said about the influence which foreigners might exert?

A. Yes, it was said they would exert a good influence in regard to industry.

Mr. T. E. Any other influence—any thing about independence?

A. I cannot say whether that was stated by Mr. Richards to the chiefs, it was fully understood by Mr. Farnham and myself. I suppose that he laid the matter fully before them, and that it was understood, for I had made him my agent in carrying on the negotiation.

Mr. T. E. Was any thing said by Mr. Richards, or the King or the chiefs, in any of these conversations, respecting the leasing of unoccupied lands on the islands—any objections?

A. None only that I should respect the rights of those who were located on the lands—those I was to respect.

Mr. T. E. Any objection about leasing lands which had no persons living upon them?

A. No. It was supposed that the King had a perfect right to lease such lands.

Mr. T. E. Did you ever hear, at that time, any doubts expressed by any body on that subject?

A. No, sir, never.

Mr. T. E. When did it first become known here that Mr. Brinsmade had been negotiating in Belgium to get up a company?

A. I think in the fall of 1943, after my return from the United States.

Mr. T. E. Did you ever have any conversation with any one on the Sandwich Islands, connected with Government, on the subject of that Belgian Contract?

A. I did, with Dr. Judd.

Mr. T. E. What did Dr. Judd think about the success?

Mr. Ricord. I would like to have Dr. Judd give that testimony himself.

Mr. T. E. I prefer this way.

Mr. R. It will be impeaching Dr. Judd.

Mr. T. E. I have asked what Dr. Judd said on the subject.

Mr. R. Dr. Judd has been subpoenaed on your side as a witness, and I contend it is contrary to law to introduce one witness to prove what another witness said.

Mr. T. E. Then prove it.

Mr. R. I want to object to hearsay evidence in the course of this investigation.

Mr. T. E. I want to know whether Mr. Ricord would object to my asking a witness what he (Mr. R.) had said.

Mr. R. I should not, but then I am not a witness.

Mr. T. E. I want to show, for there is no use in concealing my object, what Dr. Judd, one of the agents of this Government, said. My object is to show that the Government fully understood the contract when they entered into it, and knew all about it. I want to prove it by what Dr. Judd said, who is the most active member of Government. How else are we to prove it—we cannot prove it by the King and chiefs to the arbitrators.

Mr. R. I want to cite two paragraphs, and then you may take your own course.

“ This test of truth not only excludes evidence of mere hearsay, or then the party on whose authority the statement rests, cannot be cross-examined; but also decrees and judgments in private matters, causes to which the party against whom they are offered was not privy, and consequently when he had not the opportunity to cross-

examine the witnesses on whose testimony the judgment or decree was founded. For as it would be dangerous to admit the testimony of a witness given upon a former occasion where the party to the present cause had no opportunity to cross-examine him, it would be equally so to admit the judgment or decree which is founded upon that testimony; it would be indirectly giving full effect to evidence which is in itself inadmissible."

The opposite parties here want to take evidence as to what another witness did say, and that witness is a witness for their party, and has been subpoenaed, and it is improper to ask what he said until he has been examined; it goes on the supposition that he has forgotten or will not tell the truth.

Mr. T. E. No sir.

Mr. R. I apprehend Dr. Judd would say every thing that the present witness can say, and I should have a chance to cross-examine him.

Mr. T. E. We do not know that we shall introduce Dr. Judd,—he has been subpoenaed, but that does not make it incumbent on us to swear him.

Mr. R. But I contend that the highest evidence ought to be introduced, at least the law says so, and we go by it.

Mr. T. E. I ask this question,—suppose the king had said it, might I not prove what he had said, and if one of his agents said it, it is the same as if he had said it, and I have a right to prove what has been said.

Mr. R. Yes, but there is a difference between the King and his subjects; evidence of what the former said might be introduced. Starkey says the highest kind of evidence shall be introduced; but the evidence of Mr. Calkin is secondary evidence,—it is mere hearsay evidence.

By the Board. We think he ought to answer that question.

Mr. R. But it is throwing the *onus probandi* on me, and I object to that decision, and wish that objection to be noted.

Mr. T. E., to the witness. Will you state how Dr. Judd expressed himself?

A. I had frequent conversations with him in the fall of 1843, and he always expressed himself favorably and hoped it would succeed.

Mr. T. E. Was there any particular occasion when you had a conversation with him on the subject?

A. Yes, in the summer of '44,—I cannot tell the month,—it must have been in July, or at all events in the middle of summer, when a vessel arrived with dispatches for Government and Ladd & Co. I took the Government dispatches and rode to Dr. Judd, and delivered them to him. He took me into his private room and locked the door, and read his letter from Mr. Richards, and during the time he

was reading it, he read one paragraph aloud; it related to Mr. Brinsmade.

Mr. R. I object to this evidence being given, because there is higher evidence procurable, namely, the written documents in question.

Mr. T. E. What did Dr. Judd read to you?

A. He read something like this : " If there is faith to be placed in the merchants and capitalists in Europe, Brinsmade will succeed in his operations."

Mr. T. E. remarked that it was necessary to give the paragraph in evidence in this way, as they could not get the letter itself.

Mr. R. No demand has been made for it.

Mr. T. E. We ask it now ; when Mr. Richards was sworn, he was asked to introduce it, and Mr. Ricord promised to file it.

Mr. R. What was the date of the letter?

A. I cannot tell the date,—it was about July or August, 1844, when it was received.

Mr. T. E. Did Dr. Judd say it was from Mr. Richards?

A. Yes.

Mr. T. E. Please to repeat the purport of that paragraph.

A. "If there is any faith to be placed in the merchants and the Capitalists of Europe, Brinsmade will succeed in his operations."

Mr. T. E. Did Dr. Judd at that time express himself pleased.

A. He did. He threw his papers down on the settee and said, I hope Brinsmade will succeed; if he does not, the Sandwich Island Government are under everlasting obligations to him, and they ought to and shall remunerate him handsomely for his services in Europe.

Mr. T. E. What services did you understand him to allude to?

A. In assisting Messrs. Richards and Haalilio: so I understood, though he did not state so. In my conversations with him, the independence of the Islands and the Belgian Contract were always considered together by me as one matter of business.

Mr. T. Have you any recollection whether there was news in reference to the recognition?

A. Immediately afterwards,—about a day or two,—it was known that the recognition had been obtained, or a promise given, and I understood those letters to contain the news.

Mr. T. E. What was Dr. Judd's position at that time?

A. He was Secretary for Foreign Affairs and a member of the Treasury Board.

Mr. T. E. Were you on intimate terms with Dr. Judd at that time?

A. I was, yes sir.

Mr. T. E. Had you had, or have you ever had frequent conversations with him on this subject?

A. Yes sir.

Mr. T. E. What has been his uniform expression with regard to Mr. Brinsmade and the Belgian Contract?

A. I never heard him express himself but as being favorably disposed till the present time; he was always favorably disposed at that time. Since the fall of 1845, my communications with him have been less frequent, as I have been living at Lahaina, and seen him less frequently.

Mr. T. E. In these conversations with Dr. Judd about Messrs. Richards, Haalilio and Brinsmade, were allusions frequently made to the Belgian Contract?

A. Yes sir, very frequently. I recollect at one time in '43, he expressed his great fears that the cession of the Islands to Lord George Paulet would interfere with and retard Brinsmade's operations.

Mr. T. E. Did Dr. Judd appear interested in the success of the thing?

A. Yes, he always did.

Mr. T. E. In any conversations which you have had with Dr. Judd, has anything been said about the power or authority that Mr. Richards and Haalilio had taken with them to Europe?

A. No, sir.

Mr. T. E. Has it ever been intimated to you that they had no power to enter into that contract?

A. No sir.

Mr. T. E. Has anything been said of any expectations of vessels coming here, and of their freight?

A. Yes, he has spoken to me several times, expecting a vessel laden with sugar mills, and perhaps specie, and expressed himself anxious that it should arrive, as he felt himself under obligations to advance money to the house of Ladd & Co.

Mr. T. E. A ship from whom?

A. From Messrs. Richards and Brinsmade; Mr. Richards was to take passage in her to Panama, and to come across land on purpose, as I understood.

Mr. T. E. By whom was it to be sent out?

A. From the Belgian Company.

Mr. T. E. What as you understood from Dr. Judd, was coming out in her?

A. Goods and agents for the company, and specie.

Mr. T. E. Sugar mills also?

A. Yes, sugar mills.

Mr. T. E. About the time Mr. Richards left here with Haalilio, what were his relations with the King?

A. At the time I left here in January, 1842, he was interpreter to the King, and teacher of the chiefs, and giving lectures on political economy.



**Mr. T. E.** I mean the terms of association and intimacy with the King?

**A.** He was in great intimacy with the King; if any foreign business was done it was done through him; it was understood that he was the key to the King; his sanction was considered as the sanction of the King, as he acted by powers from the King.

**Mr. T. E.** Have you ever had any conversation with the King on this subject?

**A.** I have.

**Mr. T. E.** Where?

**A.** At Lahaina.

**Mr. T. E.** When?

**A.** In the summer of 1844.

**Mr. T. E.** What did you converse about with him?

**A.** About his letters; he had received some news from Brinsmade, and knowing me to be interested prospectively with Ladd & Co., and knowing that I had been in their employ, he said he had received letters from Mr. Richards with very favorable intelligence, and seemed very much pleased with it. He said that Haalilio had written very favorably of Mr. Brinsmade and his assistance there, and it was all going to be maikai loa. (*Very good.*)

**Mr. T. E.** Did the King say so?

**A.** Yes.

**Mr. T. E.** What did you understand him to refer to, the Belgian Contract, or the recognition of independence?

**A.** In those days they were considered as one object, at least by me in my conversations with the King.

**Mr. T. E.** Did the King at that time appear to understand that Messrs. Richards, Haalilio and Brinsmade had negotiated with the Belgian Company of Colonization?

**A.** I understood it so.

**Mr. T. E.** What did he say about the operations of that company?

**A.** He asked if there were a good many foreigners coming out to carry out the objects of the company. I told him I thought not, as the object was to employ native laborers.

**Mr. T. E.** Was anything said by him about expecting a vessel?

**A.** Yes, I think in one instance, he asked me about a vessel, if there was not a vessel coming from Panama, and when she would be here.

**Mr. T. E.** Anything about sugar mills?

**A.** He asked me about sites for sugar mills, and different locations, and the extent to which business could be carried. I don't think he stated anything positive about sugar mills; he talked about the vessel and operations after she arrived, and how many foreigners she would bring, &c.

Mr. T. E. Were you Consul or Vice Consul at Lahaina at that time?

A. I was.

Mr. T. E. Were you frequently at the King's palace or residence?

A. Yes, I was frequently there myself, and my wife used to visit him once or twice a week in summer.

Mr. T. E. Could you understand or speak the native language?

A. Yes, sir.

Mr. T. E. Did you ever hear the King express any anxiety or fear that Mr. Richards and Haalilio had exceeded their powers in executing this Belgian Contract?

A. No, sir.

Mr. T. E. What did he say upon that subject about Mr. Richards' and Haalilio's proceedings.

A. He always expressed himself fully satisfied with what they had done, and entirely confident in their integrity. He spoke of their arrangements in trying to get the independence, and said it was *maikai loa* (very good).

Mr. T. E. With regard to the Belgian Contract?

A. It was all understood together. At that time there was no distinction made between the Belgian Contract and the independence in my mind or his.

Mr. T. E. At these interviews, when the subject was talked over, was any one else present?

A. The Premier on one or two occasions.

Mr. T. E. What did she have to say?

A. I never recollect her having any thing to say excepting on one occasion, or rather when one time I met her alone, she said Messrs. Richards and Brinsmade were doing well for the Kingdom, and she hoped to see them back. She had received a letter from Haalilio—I think it was a personal letter—I won't be certain.

Mr. T. E. Did she express herself pleased?

A. Yes, very much pleased.

Mr. T. E. Since the return of Mr. Richards, have you had any conversation with him on this subject?

A. Very short. Two or three short conversations.

Mr. T. E. What did he say on those occasions?

A. He has never expressed himself fully, he seemed very reserved. One time he expressed himself that he feared serious difficulties in settling affairs between Government and Ladd & Co.

Mr. T. E. Did he express himself as anxious about having it settled.

A. Yes, that he had endeavored to bring about a settlement.

Mr. T. E. Have you ever had any conversation with Mr. Ricard on this subject?

A. Nothing very definite. I have spoken to him once or twice:

in the spring or summer of 1845 I spoke to him in rather a playful way, and asked him if he was not afraid there would be serious difficulty. He remarked that he and Government would stake the Sandwich Islands against the Belgian Contract—one or the other must fall.

Mr. T. E. Did he convey any idea to you that the Belgian Contract should be broken down at all hazards?

A. Yes, I so understood at the time, that it was likely to take power from the King and must be broken down.

Mr. T. E. The witness is yours, Mr. Ricord.

Mr. R. I have very few questions to ask, as the witness deals largely in hearsay. (To the witness:) I should like to know where Mr. Farnham is at present?

A. I am unable to say.

Mr. R. Is he dead?

A. I don't know.

Mr. R. Where was he when you last heard of him?

A. He was in the United States. When I last heard of him, I heard a rumor that he was going to leave for California.

Mr. R. Have your transactions with him had anything to do with the Belgian Contract?

A. Only so far that I relinquished that to fall in with anything that Ladd & Co. might get up afterwards,—that originated their idea.

Mr. R. What disposition has been made of Wahiawa.

A. I never had a lease of it.

Mr. R. Do you know whether an agent has ever been sent out here by the Belgian Company?

A. No sir.

Mr. R. I suppose you would be likely to know?

A. I suppose I should.

Mr. R. Did Dr. Judd ever express a wish that they would send out an agent?

A. That subject never came up; it was expected that when a ship arrived there would be an agent in her.

Mr. R. Did Dr. Judd appear gratified at that expectation?

A. Certainly, in the expectation of the ship to bring out sugar mills and agents to carry out the thing.

Mr. R. You stated that Dr. Judd alluded to Mr. Brinsmade's assistance given to Messrs. Richards and Haslilio as a motive for compensating them,—why do you think he alluded to that?

A. He said in very express words, that Government were under everlasting obligations for his assisting them in Europe.

Mr. R. What prospective interest have you in the Belgian Contract?

A. I have none now. I had at that time one of becoming one of the house of Ladd & Co; it was promissory and prospective.

Mr. R. To what extent and of what nature?

A. If they succeeded, and I remained here, that I should be permitted to purchase in the concern, or buy one of the partners out.

Mr. R. Had you an office under the Belgian Company?

A. No sir.

Mr. R. Have you no interest now?

A. No sir, none whatever, as I suppose all interest has ceased.

Mr. R. No interest in the result of this arbitration?

A. No sir, none whatever; I gave up all my interest in 1844, and have been in business on my own account ever since,—quite independent.

Mr. R. I have no other question;—yes, one other question,—what is the state of indebtedness between you and Messrs. Ladd & Co.?

A. I do not know whether that is a question necessary to answer. By the Board. Certainly you must answer.

A. They may be owing me one, two, or three hundred dollars; a mere trifle. I presume it cannot be over three hundred dollars.

Mr. R. What for?

A. Part for the disbursements on the canal which has been taken away from them by Government, that I paid out of my own pocket.

*Dr. R. W. Wood called to the stand.*

Mr. T. E. Have you been sworn.

A. Yes.

Mr. T. E. When did you come to the Islands?

A. In the spring of 1839.

Mr. T. E. How long have you resided here?

A. Ever since.

Mr. T. E. How long after your arrival before you became acquainted with Dr. Judd?

A. Very soon.

Mr. T. E. Were you on intimate terms with him?

A. I was. I used to meet him frequently professionally.

Mr. T. E. Have you had any conversation with him about the Belgian Contract?

A. It was a frequent matter of conversation between us.

Mr. T. E. I mean since he has been in office under Government.

A. Yes.

Mr. T. E. When did he take office?

A. Very soon after Mr. Richards left; I do not exactly recollect.

Mr. T. E. How has he expressed himself in regard to that contract?

Mr. R. I renew my objection to hearsay evidence. I object in the same way as I did to the last witness.

By the Board We have adopted that rule Mr. Ten Eyck, to

avoid discussion. We don't think you should introduce hearsay evidence when the person who used the words is at hand.

Mr. T. E. I want to introduce this evidence to show what the feeling of the Government was on the subject of the Belgian Contract. I don't know that I shall question Dr. Judd, but I claim to know what an officer of this Government may have said about the Belgian Contract. Will the court send me to Dr. Judd to get evidence, whose feelings are so interested? We don't know what Dr. Judd may swear to ; it is unfair to force us to get witnesses from the opposite party,—from the camp of the enemy,—when we have a witness of our own.

Mr. R. Mr. Ten Eyck by so saying, impugns his own witness. I have done nothing to impeach Dr. Judd, their witness.

Mr. T. E. I have said nothing against Dr. Judd, and am far from wishing to do so.

Mr. R. Legal critics will hereafter take up the case, and they will find that illegal evidence has been taken.

Mr. T. E. I deny that Mr. Ricord can show that this evidence is inadmissible.

Mr. R. I will read from Starkey, 1st vol. page 500.

"One of the most important rules upon this subject is that which requires that the best *attainable* evidence shall be adduced to prove every disputed fact. This rule has already been adverted to, though but slightly, inasmuch as its effect is not to exclude any of the materials of evidence in the abstract, but only by comparison of the evidence offered with that which might have been produced, but which has been suspiciously withheld.

"The ground of this rule is a suspicion of fraud. If it appear from the very nature of the transaction that other and better evidence of the fact is withheld, a presumption arises that the party has some secret and sinister motive for not producing the best and most satisfactory evidence, and is conscious that if the best were to be afforded, his object would be frustrated : subject then to the observations which will be made upon the operation of this rule, it follows that of the several gradations in the scale of evidence, no evidence of an inferior class can be substituted for that of a superior degree. It is a very general rule, that the contents of a writing cannot be proved by a copy, still less by mere oral evidence, if the writing itself be in existence and attainable, &c. ."

Now I would say that while Mr. Judd is here, and a primary witness, he ought to be examined first, and if he states anything that is false, they may then call another witness.

Mr. T. E. Suppose we introduce Dr. Judd as a witness, and suppose he says something, concerning which, Dr. Wood would state to the contrary, we could not examine Dr. Wood on the subject, because Mr. Ricord would then say, you cannot impeach your own

witness; he would compel us to introduce a witness adverse to our interests, and then if he says anything wrong we cannot correct it,—this I hold to be the law. You are going to embarrass us if you do not allow us to bring forward testimony of the words of Dr. Judd. He is a man that had and still has the King's confidence more than any other. It has been said that Mr. Richards exceeded his powers, and that the contract could not go into operation until it was ratified. Now we want to show that they wanted the contract to go into operation, and that the idea of the King's ratifying it never entered into any one's head till it entered into the head of the Attorney General to break up the Belgian contract.

Mr. R. The primary witness is in town, why not call him?

Mr. T. E. He is the agent of the King.

Mr. R. I am the sole agent of the King in this matter ; I alone signed the compact.

Mr. T. E. I should like to know how you can be the sole agent of the King if it is true as you have said all along, that you could do nothing in this matter without consulting with your colleagues?

Mr. R. I may do so if I like, or I may consult even with any one else. Dr. Judd is not interested in the least in this matter. He is an upright and a truth-telling man, and if he be examined, and Mr. Ten Eyck cannot get what he wants from him, then he may take other evidence to impeach him, and I will not object. I will not do so except on a point of law. If I had subpoenaed Dr. Judd, he might have said he was my witness, but I have not subpoenaed anybody, and I do not know that I shall want a single witness.

By the Board. We should like to have you both state your position, with your authorities—we think it important.

Mr. R. I will do so. I maintained in the first place, that the proofs of the first item is incumbent upon Ladd & Co., who have introduced several witnesses, one of whom I objected to on the ground of interest. I have since objected to hearsay evidence, and to the introduction of evidence about written documents that are procurable, also the proof by one witness of what another witness has said. Here is a record of this case as far as it has been printed, in which I find the names of certain witnesses subpoenaed by the other party. I will read them out. In page 22 of the pamphlet, I find the names of their Excellencies, R. C. Wyllie, G. P. Judd and W. Richards. They are subpoenaed as officers of the Government. I do not object to their being introduced, but I object to the witnesses being called to testify what they said until they have been examined. If after, if that the parties still object to their replies, they can introduce Dr. Wood, not noticing the rule of law which says, they shall not impeach their own witnesses; and here I take my gage that I will not object to their impeaching their own witness, and I assert that the evidence of Dr. Judd would be the highest evidence. Judge Story

in his *Conflict of Law*, page 529, says, "The general principle is, that the best testimony or proof shall be produced which the nature of the thing admits of; or, in other words, that no testimony shall be received, which pre-supposes better testimony behind and attainable by the party who offers it."

This is the ground for the best evidence, and I alledge Dr. Judd to be the best evidence of what he said until he is impeached. It seems to me to be a plain proposition; the question is, is he the best evidence?

Mr. T. E. We are not compelled to go to him.

Mr. R. I assert him to be the best evidence.

Mr. T. E. Of what?

Mr. R. Of what he himself said. But I am not in colloquy—there seems to be a wish on the other side to interrupt and interlard and riddle. Now I say that Dr. Judd has in his memory what he said, and if he does not give in evidence what he can be proved to have said, then they can impeach him. This is like taking verbal testimony of the contents of written documents, or something tantamount to it. Here is the party who made use of the words, he has been subpœnaed, he is a creditable witness and unimpeached.—To suppose that he would not relate what he said would be to suppose him impeachable. I maintain that the best evidence that can be got should be introduced. In the case of Mr. De Fiennes, you ruled that he was the best judge of his own interest, and I contended that he might be mistaken about it, but you ruled so. Taking the same rule I contend that Dr. Judd is the best evidence of what he said, until he is impeached, which he has not been. But if he is impeachable, why in the name of common sense (which by the way, we have not brought into court with us) let him be impeached.

Mr. T. E. The mere fact that we had him subpœnaed, does not prove that we are bound to swear him.

Mr. R. But the fact of your having subpœnaed him shows that you considered him a good witness. I contend that you are bound to consider him your witness on any point where you have not specified for what particular point he was subpœnaed. But you have not been particular at all. I mean to come in with a bill of particulars as to what I mean to prove. I hold that the witness was subpœnaed generally. But you go to introduce other witnesses, and interested ones, to prove by an inferior degree of proof what your own primary witness can prove. This seems to me to be lopsided.

Mr. T. E. I have only to repeat, that here is an action brought by Ladd & Co. against the Sandwich Islands Government. Who constitute that Government? why of course the Government officers; the Minister of Foreign Affairs, the Minister of Finance, the Minister of the Interior, and so on. All those who are members of the Privy Council of the King are in fact part and parcel of the Gov-

ernment, and the Government could not be administered without them, and we are to go into the Government and take one of its officials,—one bound by oath to support this Government, and to advance its interests,—yes, Mr. Ricord would bind us to go into that Government and take from it a witness to testify to something that he himself said about this Belgian Contract. Now if it be proved by anybody what officers of the Government have said about this Contract, I ask whether it would not be proof satisfactory to your minds that we were shewing what the intent and object of the Government was in entering into this Contract, and if we don't prove it by what was said by the agents of the King and chiefs, and in fact the moving springs of their actions, how are we to prove it? It is usual, and the practice wherever I have been, to admit the declarations of parties. Look at the U. States; is it not a common thing with the agents of the Post Office and other offices, to make agreements; to enter into contracts; and are the words they use not taken as evidence? Such things could not be proved any other way. With regard to Dr. Judd, I do not say anything against him,—I do not imagine that he would say anything that is not perfectly true, but it is wrong to compel us to introduce a witness who is inimical to us—it is unfair. Suppose Dr. Judd, instead of being a highminded man was a rascal. We should be compelled to resort to that man to prove our case, and when he contradicted himself or stated what was untrue, the gentleman would say, you cannot impeach your own witness. Is this fair, is it legal, is it equitable?

Mr. R. I had only got through my first position when I was interrupted by Mr. Ten Eyck.

Mr. T. E. You had taken your seat.

Mr. R. I come next to consider Dr. Wood's as hearsay evidence; his evidence must necessarily be hearsay evidence if he heard it from Dr. Judd.

Mr. T. E. I make a distinction between persons who are agents of the Government, and other individuals, and I would not for a moment contend that the statement of words of any person in town, ought to be taken the same way, but as the words of an officer and general agent of Government, I contend that they ought to be used.

Mr. R. I will again refer to Starkey in regard to hearsay evidence. It seems to me that the gentleman is trying to circumvent something, and get something by irregularity. He seems to want to get at facts by irregular channels. I am the more strenuous on this point because I believe my friend Dr. Judd to be incorruptible, and incapable of saying anything untrue, or even of keeping back the truth. I say that Dr. Wood is a hearsay witness.

Mr. T. E. We cannot get the evidence of the King and chiefs, and what other course have we? I do not contend that he is interested, now. Dr. Judd may be interested, and I may object to him



on that ground, but I don't know anything about it now, for the time has not come yet to object to him as an interested person. But he is a member of this Government, and if he was so at the time he made those declarations, I insist I have a right to his declarations as evidence.

The court then adjourned to the 7th October, at 10 o'clock A. M., to hear the arguments of the parties on this point.

#### THIRTEENTH DAY.

The Board met at 10 o'clock.

Mr. Ricord. There are a few remarks I wish to make in regard to the point originated day before yesterday. I propose to open to you by stating that I have still the same objection which I had before to the introduction of Dr. Wood to prove things said by a third party not in interest and not proven to be in interest. Dr. Judd is the best evidence. You have decided in the case of Mr. De Fiennes that he was the best evidence of what he had in his own conscience; that is, to prove his own interest, or what he may have said, or what he may have thought, and I have a right by the rules of law and evidence to cross-examine Mr. Judd about what he has said. I would like to know what he did say, what his authority was for saying what he said, and what his power was. That I have that right I will prove to you from the second volume of Starkey, page 24. I mean to confine my remarks mostly to books, as they have better authority than anything I can originate or say to you on the subject. It is asserted that "the power given to the party against whom evidence is afforded, of *cross-examining the witness upon whose authority the evidence depends*, constitutes a strong test both of the ability and of the willingness of the witness to declare the truth." I object also that it would be hearsay evidence, and this you yourselves have said should not be received or relied on, and in this I am sustained by the 1st of Starkey, page 25, where speaking of cross-examining witnesses he observes, "This test of truth not only excludes evidence of mere hearsay, for there the party on whose authority the statement rests cannot be cross-examined, but also decrees and judgments in private matters, in causes to which the party against whom they are offered was not privy, and consequently where he had not the opportunity to cross examine the witness on whose testimony the judgment or decree was founded. For as it would be dangerous to admit the testimony given on a former occasion, when the party to the present cause had no opportunity to cross-examine him, it would be equally so to admit the judgment or decree which is founded upon that testimony; it would be indirectly giving full effect to evidence which is in itself inadmissible."

And at page 36,

"As information derived mediately through another person is in

its own nature inferior in point of certainty to that which is derived immediately from an eye or ear witness, so, even in cases where the party from whom such testimony is derived, delivered it under the sanction of an oath, and although the party to be affected by it had the opportunity to cross-examine, yet the testimony so given would still be inferior in degree to the direct testimony of the same witness, and consequently such inferior evidence would be excluded by the general principle already adverted to, so long as the original witness could himself be produced."

Even though he might be under oath, what he said in the hearing of the third party, would still be secondary evidence. At page 39 the same author says:

"Where the communication is derived through several intermediate witnesses, it is still weaker in degree; there is greater latitude afforded for misunderstanding and mistakes, or even designed wilful misrepresentation; and it is more difficult to appreciate the veracity of the original witness, the means which he possessed of acquiring information, and the motives by which he was actuated in making the communication. Ordinary experience shows how little credit is due to such mediate testimony, and how frequently it happens that even most absurd and improbable reports acquire credit."

And the author adds that where *immediate* testimony is unattainable, mediate will not be received.

Thus you see that the law excludes hearsay evidence in all its stages I do not contend that what I or any other party in this case may have said should not be proven, for that would not be hearsay evidence. They have offered to prove what I said; very well, that is *prima facie* evidence. So it would be if they were to prove what the King had said, because he is a party to the record, but Dr. Judd is no party to the record. I should like to ask of Dr. Judd by what warrant he said what he said. If he has no authority, of course his saying so would not bind my client. My assertions on your part, gentlemen, ought not to be taken against you unless it were proved that I had your authority. Starkey, 2d vol., page 41, broadly asserts,

"Before the act of B. can be given in evidence as the act of A., it must be proved that B. was the agent of A."

"The agent is called as a witness to prove that he was authorized to do the act, or transact the particular business."

The agent is called upon to know whether he had the power.—That is my object. I wish to ask Dr. Judd whether he had the power to make such admissions as would bind the King. You might think he had the power, and we might question the fact. To the same effect is the following quotation from Starkey, 1st vol., page 549:

"Of all kinds of evidence, that of extra-judicial and casual de-

clarations is the weakest and most unsatisfactory ; such words are often spoken without serious intention, and they are always liable to be mistaken and misremembered, and their meaning is liable to be misrepresented and exaggerated."

"A hearer is apt to clothe the ideas of the speaker, as he understands them, in his own language, and by the translation the real meaning must often be lost. A witness, too, who is not entirely indifferent between the parties, will frequently, without being conscious that he does so, give too high a coloring to what has been said."

And in support of this, you have yourselves gentlemen, prevented Mr. De Fiennes from testifying to what Mr. Nothomb said ; you stopped him at my request, and have prevented Mr. Stevens from retailing conversations of Mr. Richards' while on his passage out here. That was all in the spirit of this legal rule ; it was all on the same principle. But the principle of refusing hearsay evidence is not my only reason for objecting. There is another principle ; it is that the highest evidence which the nature of the case admits of shall be received. I wish also to record some authorities superior to any thing I can say upon this point,—Starkey, 1st vol. page 500.

"One of the most important rules upon the quality of evidence is that which requires that the best *attainable* evidence shall be adduced to prove every disputed fact." "If it appear from the very nature of the transaction that other and better evidence of the fact is withheld, a presumption arises that the party has some secret and sinister motive for not producing the best and most satisfactory evidence, and is conscious that if the best were to be afforded, his object would be frustrated."

Sir William Blackstone maintains the same doctrine, 3d vol. page 368. See also, 1st Starkie, 417, 418, 507 and 623, and Mr. Justice Story's Conflict of the Law, 529 : "The general rule is that the best testimony or proof shall be produced, which the nature of the thing admits of, or in other words that no testimony shall be received, which presupposes better testimony behind, and attainable by the party who offers it."

When they have satisfied your minds that Dr. Judd is incapacitated from testifying from some moral obliquity, or some pecuniary interest,—when they prove this, it will be time to exclude him, but until then, he is the best witness, because I can cross-examine him. They have alledged that Dr. Judd is interested, but it baffles my understanding—I cannot see in what. The allegation is one thing, but the proof is quite another. If Dr. Judd were placed on the stand, and examined whether he had any interest, in imitation of Mr. De Fiennes, on *voir dire*, and confessed himself to be interested, or if after his denying it they still disputed it,—although I was prevented from introducing evidence to show that Mr. De Fiennes was interested,—they might do so, and I would give my consent to your receiv-

ing to Mr. The State Counsel contended at any great length, and the interest to exclude must be a *motived* interest, and we then went into the subject. I do not think it necessary to cite again the authorities to the disqualifying interest of a witness. — They are to be found in the 16th and 17th pages, and so onwards of the 1st of Starke. It would be unjust to Dr. Judd to go on the presumption that he is interested, and to take it for granted, and therefore exclude him. It would be unjust to my client, because everybody knows that Dr. Judd has been alluded to by Mr. Richards in his testimony, and upon this principle I have a right to examine him. A party alluded to by another witness can be examined to see whether that witness has made proper allusions. It is a thing of which you take no heed I believe in this inquiry, but which I wish to spread upon the record by alluding to it, that Dr. Judd is a witness subpoenaed by the other party, and so far accredited as a man to be relied on in some stage of this inquiry: that is, that he is a truthful man. I have subpoenaed no witness. I will prove by reciting from Starkie, 1st vol., page 216, that he can be examined on his *voir dire*, as their witness purged himself:

“Where a party is under the necessity of calling a witness for the purpose of satisfying the *formal proof which the law requires*, he is not precluded from calling other witnesses who give contradictory testimony. And even where a witness by surprise gives evidence against the party who called him, that party will not be precluded from proving his case by other witnesses.”

He can be examined and rebutted by them, a thing that was contended against by my learned friend on the other side, who asserted that he could not bring evidence to gainsay what his own witness had said.

In regard to the party's impeaching his own witness, the books lay down the rule as it was stated the day before yesterday. I had stated that if Dr. Judd were examined, and gave in evidence what he did not really say, that Dr. Wood could be introduced as supplementary or supplementary. “A party cannot discredit the testimony of his own witnesses by general evidence of incompetency; for it would be unfair that he should have the benefit of the testimony, if favorable, and be able to repel it if the contrary.” 1st Starkey, 216.

I contend that by parity of reasoning so far as conclusion goes upon the face of the record, they do virtually impeach without hearing proof, Dr. Judd's veracity, or his competency, or his interest, or something else; it would appear so upon the face of the record. I think it is a very violent presumption to say that Dr. Judd is interested. You have it on record that Dr. Judd is excluded from a consideration of this case, which altogether devolved upon me since 1845, long before this compact was entered into. Dr. Judd will say whether I have taken counsel of him. I have had no conversation with Mr. Richards, or Mr. Wyllie. As to the facts re-

posed in Dr. Judd's Bureau,—he is certainly the best person to give them and all the letters, &c., or to affirm everything concerning them. I might furnish them; but suppose he hesitated to produce them? if he should, I would have to resort to you for compulsory process to get those papers. I assure you that so far as pecuniary interest goes, he has no interest in this matter; he has his salary from Government, but if you were to exclude him on that ground, you might as well exclude every clerk of every mercantile establishment in town, in matters that relate to those several establishments.

Mr. T. E. The question has not been, whether Dr. Judd is interested or not.

Mr. R. Then introduce him; I can cross-examine him. I want to know who gave him power to make such and such assertions, and what they were predicated upon. The authority I read shows that mediate evidence is liable to error, coloring and misconception. If Dr. Judd is an officer of Government, that does not exclude him; I think that has already been shown, but I have taken pains to run over the subject a second time. In the supreme court of the United States, see the second of Dallas' R., p. 300: "In an action against a principal, on a contract made by an agent, such agent is competent to prove the contract, and the instructions from his principal." *Livingston v. Swandick*.

And again, you will find that Mr. Starkie speaks to the same effect. He says here upon the authority of *Ashford v. Price*,

"The question was whether the defendant, the purchaser of goods, had agreed to find bags for the carriage of them; according to the report of the case, the plaintiff afforded in evidence the letters of the broker who sold the goods, (being the plaintiff's own agent) written to the plaintiff, saying that the bags would be ready by a certain day; the broker was then in the box, and Lord Kenyon said he would admit evidence of what he had done on account of the defendant, but that it should be learned from himself and not from his letters. The agent himself must be called to prove any fact within his knowledge." 2d Starkie, p. 45; see also, 2d vol. p. 437, and 3d vol. p. 1323 of the same author, to the like effect.

What earthly objection there can be to receiving Dr. Judd's evidence, I do not know, but I deny their right to receive any evidence of what he said. In the first place, it is hearsay evidence; secondly, it is not the highest testimony; and in the third place, the person whose words they want to prove, is here in court, is always in town, and is not interested in the case.

Mr. Ten Eyck then rose and said:

The object of introducing Dr. Wood was to show, from conversation he had with Dr. Judd, what Dr. Judd had said in regard to his expectations in reference to the Belgian Contract, and what he had said in reference to the sale of Ladd & Co.'s property; that I

propose to prove by Dr. Wood. I do not propose to prove by him any material fact not within his own knowledge,—a fact known only to him from what Dr. Judd told him. But I intended to ask him concerning facts within his own knowledge, whether he heard Dr. Judd say so and so, not that he knew that the thing existed because Dr. Judd said so, but whether he heard Dr. Judd state such *facts*, and if he did, then Dr. Wood can testify the fact of Dr. Judd's assertions, of his own knowledge. But before proceeding with this point, I would say a word or two in regard to the equities of this case, (for you are to decide according to equity as well law). To us Americans, this Government is an anomaly.

In the U. S. every person has access to the chief executive officer of Government. The views and objects of Government are known to the public through him. He has sufficient knowledge and independence to do and act for himself.

Here, from the very nature of things it is notoriously otherwise, because foreigners in their intercourse with this Government must necessarily do their business through the agents of Government, who speak their own language. They cannot have access to the King to get his own views. It is not necessary, and perhaps it is not proper that they should. Therefore foreigners are under the absolute necessity of doing their business through foreign agents, and relying upon their statements with regard to the views and opinions of Government, and cannot get at them any other way. You or I or any other private individual cannot get at the views of Government by any other route, and such has been the case ever since the Government has been organized upon its present basis. The foreign community who transact business with the Government do it through those agents, and cannot do it in any other way. We cannot make contracts, written or verbal, but through those agents, and if what they state to be the plans, views and opinions of the King and Government, is not to be taken as evidence, how in the world are you to get at the views and opinions of the King and Government. In fact there is no Government without these foreign executive agents. Take away the executive departments, and there is no Government. The whole machinery which constitutes the Government must thereupon fall to the ground, and leave nothing but chaos and confusion. Now what is the simple idea conveyed in that word Government, as appended to the Sandwich Islands? What do the constitution and laws make the Government to be? Why, the constitution makes the King and Premier to be the heads, after them come the executive, the judicial, and the legislative *branches*; and these four different *branches*, constitute and form THE GOVERNMENT, and there is no Government unless the whole are combined. Take away one branch from this executive tree, and the tree is despoiled of its fair proportions. There is no fair and perfect tree of Government here,

less all the branches are united to the trunk;—lop off one, and you make it imperfect at once. So long as the present constitution and ~~we~~ exist, there is no Government here without these four different departments or branches of Government. Now this compact to arbitrate, is between the King and *Government* of the Hawaiian Islands and Ladd & Co., and you are called upon to decide according to the compact, “how much the Hawaiian Government is to pay Ladd & Co.,” &c. Mr. Ricord’s idea that the compact is simply between himself and Ladd & Co., is all nonsense. The compact is entered into with the Government of the Sandwich Islands through Mr. Ricord as agent,—he is a mere agent of Government, appointed by it, and has signed this compact as an agent. The compact is not between Mr. Ricord and Ladd & Co., not at all.

It is in testimony then, that Dr. Judd was principal secretary of state for foreign affairs and chief member of the Treasury Board, at the time when these conversations, which I want to get at from Dr. Wood occurred, and was a part and parcel of *the Government*, and being such then, and having continued in the executive branch ever since, he is a party to this suit, *a party to this record*. Starkey says, in his second volume, page 39,—and the doctrine I presume will not be disputed,—“The admission of a party on the record is *always* evidence, although he be but a trustee for another, and although it appears from the admission that he is such.”

Now it seems to me that I might here safelyoust this whole question between the Attorney General and myself. It is a fact, and you cannot dispute it, that the constitution and laws make so many departments of the Government of the Sandwich Islands, and there is no Government unless all those compartments are combined in one. The Government is imperfect without them, and if it be proved that Dr. Judd, when these very conversations occurred, was an officer of Government, and is so still, as an officer of Government he must be a party to the Government measures, and therefore has an interest in his very compact. Mr. Ricord has just stated that he is joined in the record; if so, how is he joined in it, unless because he is one of the officers of Government, one of the executive branches of this Government; and if he is so joined, then Dr. Judd, Mr. Wyllie, Mr. Richards and Mr. Li, all executive officers, are joined just as much as Mr. Ricord.

When this compact was under consideration, — I mean the compact of July, 1846,—it went before the cabinet council, and it was discussed there. Mr. Ricord has stated that he consulted with them about it. Why consult with them if they were not parties and if they were not to be interested in carrying out the compact? The whole thing was done by and through them. Mr. Ricord could not act until he had submitted the matter to the cabinet council, and from that to the privy council, and then the King ratified it,—so the whole

executive branches were consulted and became interested parties to the compact, and only through their agency could the compact have been entered into; and it could not have been a legal valid compact unless it had gone through that routine, according to the laws and rules which regulate these affairs.

But gentlemen, I insist that you are to examine this question upon, and to hear the equities of this case as well as the law of it, and with that understanding you have permitted Mr. Ricord to pump out of Mr. Richards in his cross-examination, not only his own opinions, but the opinions (hearsay) of Mr. Frelinghuysen, Mr. Butler, Mr. Farnham, Mr. Mayer, the Missionaries here and in New York, gentlemen in Boston and in Europe.

And now, forsooth, the door which was opened wide for Government, is to be closed, and close locked and barred against Ladd & Co. The motives, views and opinions of this Government, in these successful attacks to ruin, and their attempted efforts to disgrace Ladd & Co.—and the evidence of which it is impossible for Ladd & Co. to arrive at in any other way than by proving the acts and statements of their agents, who manage every thing where foreigners are interested,—Ladd & Co. are to be cut off from.

Now would it be equitable and just to compel Ladd & Co. to introduce a witness who is known to be inimical to them, and who has been one of the principal agents of the Government in doing the very wrong they now complain of,—to make him their own witness, and thereby deprive them of the power to contradict, or to show that he was interested in the suit. It does seem to me so manifestly unjust and unfair, and so likely to suppress the truth as it exists, and which you are called upon to examine, that I cannot believe for a moment you will drive them to that alternative.

As I said before, you have got to look at things here, not in the abstract, but as they *actually exist*; as they obviously appear, to every discerning, intelligent mind. The acts and opinions of the head of "the executive departments of the Hawaiian Government," are the acts and opinions of that Government. These executive officers, so far as foreigners are concerned, are the Government *de facto*, and you cannot if you would disabuse your mind of the *fact*. It is from the very necessity of the case that it is so, and I do not regret that it is so, because I know that you could not do business with the Government unless you have those gentlemen to deal with. Foreigners could not do any business with the Government were these men not in the places they now occupy. If I go to those gentlemen and make a contract with Government, verbal or written, am I to be told that what they said or did is nothing, that they exceeded their authority in making certain admissions and statements, and that they had no authority to make a contract? Suppose you adopt the rule insisted on by Mr. Ricord, and exclude statements made by Gov-



ernment officials, in suits brought against the Government, I tell you, you set a precedent which will be constantly referred to by Mr. Ricord, in all their courts, and you thus deprive foreigners of testimony, without which they must invariably lose their claims against Government, especially if they are founded upon verbal arguments. If the Government is sued, (and the laws of the Islands provide that this may be done) Mr. Ricord would insist, as he does here, that the statements made by its agents, with whom the party is compelled from the nature of things, to do his business, cannot be taken against the Government; and then I ask, what security or guarantee for your rights is then left? Every merchant that does business here is interested in this question; and if you do set this precedent, I tell you that it will be cited against you, and every other merchant, if they have verbal agreements with Government, in case those agreements are not carried out by the Government. This is the equitable consideration, which I insist under the compact, you are bound to give full weight to.

Were Ladd & Co. dealing with a Government whose agents had not permitted personal and selfish feelings to influence their conduct towards them, there would be some excuse for shutting out the proposed testimony. But it must be evident to any unprejudiced mind, that personal motives have operated in all their proceedings "*to break up the Belgian Contract at all hazards*, (as Mr. Ricord stated to the last witness, Mr. Calkin) and at the expense of Ladd & Co.

Good conscience and equity, therefore, requires that great latitude should be extended to Ladd & Co.

Justice Story, in his Equity Jurisprudence, 2d vol. p. 844, says, "If arbitrators admit the law, but decide contrary thereto *upon principles of equity and good conscience*, although such intent appear upon the face of the award, it will constitute no objection to it. If they mean to decide strictly according to law, and they mistake it, although the mistake is made out by extensive evidence, that will be sufficient to set it aside. But their decision upon a *doubtful point of law, or in cases where the question of law is left to their judgment and decision, will generally be held conclusive.*"

The law in my opinion will admit the testimony. In the first place upon the supposition that the evidence offered is hearsay testimony, I contend that even then, by law, we have a right to introduce the evidence. The law says that admissions or declarations made by a third party are in general inadmissible. I insist that Dr. Judd is not a third party, and I think I have satisfactorily shown to you that he is a party to this compact. I have shown also that he was principal secretary of state for foreign affairs, and a member of the Hawaiian Treasury Board, and in fact, *the man in authority*. He is then no third party here.

Starkey, 2d vol. p. 42, says the rule that "the admissions of third parties are in general inadmissible, ceases to be so, where the party making such admission or declaration can be considered as identical in authority with the other, or to be his mere instrument or agent."

"It seems to be a general rule that what an agent does or says within the scope of his authority, is binding upon the principal, whose instrument he is: or that not only an agreement made by an agent is binding upon the principal, but so are all the declarations of the agent at the time who in any manner affect or qualify the nature of the agreement." "The act or admission of the under sheriff is in general obligatory upon his principal, (the Sheriff) because he is notoriously the agent of the Sheriff for transacting all that appertains to the office."

"The declarations of a lawyer, authorized by the owner of the land to survey and lay out a town, in reference to the matters in the scope of his powers, are evidence against the owners of the land and his grantees in an action instituted to recover part of the land in the town." 6 Peters', 499.

It is not clearly in testimony that Dr. Judd was the instrument and agent of this Government—the instrument and agent who transacted almost the entire business of the Government, up to 1845. I think when these conversations occurred with Mr. Calkin and Dr. Wood, Dr. Judd was the principal foreign officer of Government, and I believe there was no other foreign officer connected with the Government at that time. He was the principal and only executive officer at that time, and acted as the instrument or agent of this Government, and according to Starkey, his admissions ceased to be inadmissible.

The resolution of the cabinet council referring this matter to Mr. Ricord, shews what action was taken upon it by the cabinet council of which Dr. Judd was a member, and it will be recollected that this matter was not referred to Mr. Ricord until March, 1846, while the conversations to which I allude occurred, if I understand rightly, before Mr. Ricord arrived at the Sandwich Islands. At all events, they occurred during the summer of 1844.

But I will say that you are not sitting here, gentlemen, either as judge or jury, but you are in the capacity of both judge and jury, and you are to examine the law and the facts before you make up your judgment upon this matter. The whole thing, all the evidence, all the facts connected with the case, you are to judge of, as well as of the law,—you are judge and jury. You are not to say what shall go to the jury, and what shall be excluded from them. You are to examine the facts, and will receive and consider the evidence, if it has any bearing upon the case, if it has no bearing you will throw it out, but if it has, you will take it into consideration.

How are we to ascertain the intention of the parties to this compact, if it is not by proving the facts as they occurred. But gentle-

nen, I insist that this is not hearsay evidence ; I insist that it is the highest possible evidence that can be adduced in the case. It concerns conversations between Dr. Wood and Dr. Judd, and what Dr. Judd has said about expecting a ship from Belgium, with emigrants, &c., and how he had expressed himself in regard to the Belgian Contract, &c. Now the conversation is just as likely to be recollected by Dr. Wood as by Dr. Judd, and it is as much the property of Dr. Wood as of Dr. Judd, and if Dr. Judd were introduced as a witness, I might object to him in the same way that Mr. Ricord objects to Dr. Wood. If the conversations had not occurred, it is quite evident that nothing would have been said, and when they have occurred, they are as much Dr. Wood's conversations as they are Dr. Judd's. He is as competent a witness, his evidence is as high and conclusive and original as Dr. Judd's. As long as Dr. Wood stands unimpeached, and unimpeachable too, why is not his narrative of the conversation as good as Dr. Judd's? It is more likely to be true and unvarnished, because Dr. Judd was notoriously the managing man in all the unjust, and as we expect to prove, illegal acts of Government towards Ladd & Co. Dr. Wood vouches for the accuracy and truth of his narration, and if he does not state the facts truly, Dr. Judd may be introduced by the gentleman at any time, to prove that he has mis-stated these facts. I do not want to ask whether Dr. Judd told Dr. Wood a certain thing *as a fact*, and which fact Dr. Wood testifies to on the strength of Dr. Judd's statement that such fact exists, but I want to ask him, did he state such a thing, — did he make a certain statement? and if he did, that is original evidence; it is not hearsay,—it is not secondary evidence.—The statement is the fact I want to prove. The gentleman has argued on the supposition that this was hearsay evidence ; he has not distinguished between original and hearsay evidence. But there is a very broad distinction between them; and what the gentleman calls hearsay evidence, I think I can satisfy you from this authority is original evidence, and ought to be received here. 1st of Starkey, page 40.

This is hearsay evidence; when a man testifies to a thing which he does not know of his own knowledge, but which he knows only because somebody told him. For instance, I tell A., I saw B. knock down C., and A. tells the thing to D.,—A.'s statement to D. would be hearsay. But if I say to A., I should like to see B. knock down C., and he tells D., A.'s statement to D. of my remark, would be a fact; it is what I said, and it is the highest evidence that the case will admit of. It is *original* and not *hearsay evidence* ; this is the distinction the books make.

Greenleaf on Evidence, on the subject of hearsay evidence, at page 116, sec. 100, says,

“ Before we proceed any further in the discussion of this branch

of evidence, it will be proper to *distinguish* more clearly between *hearsay evidence*, and that which is deemed *original*. For it does not follow, because the writing or words in question are those of a third person, not under oath, that therefore they are to be considered as hearsay. On the contrary, it happens in many cases, that the very fact in controversy is, whether such things were written or spoken, and not whether they were true; and in other cases, such language or statements, whether written or spoken, may be the natural or inseparable concomitants of the principal fact in controversy. In such cases, it is obvious, that the writings or words are not within the meaning of hearsay, but are original and independent facts, admissible in proof of the issue."

*Vide* also, Sec. 102, 108; 4th Mass. Rep. 702, 708; 2 Campb. 511; 1 Stark. 47, 48, 49, 50.

Have we not shown, and is it not a notorious fact, that Dr. Judd was privy to and knew all these arrangements and has he not testified to it himself? (See report of the case before one of the courts of this Island, of *Brinsmade v. Jarves*.) Does not Dr. Judd testify on the *ex parte* examination there, that in the very judgment upon which all Ladd & Co.'s property was sold, he had an interest, for "he had thrown in his own private claim," which made a part and parcel of the judgment.

Now the principal fact contended in this part of the case before you, is whether the Belgian Contract was to be ratified by the King before it went into operation; or rather Mr. Ricord has attempted to prove by Mr. Richards in cross-examining him, that this contract was to be ratified by the King, and that this was one of the conditions upon which it should go into operation: he has attempted to raise that presumption against the demands Ladd & Co. make.

Now we do not propose to ask Dr. Wood whether Dr. Judd stated that the King understood he was or was not to ratify the Belgian Contract, or whether the acts of Government were legal or illegal. This would be getting at a fact on the veracity of Dr. Judd, and would be hearsay.

But when I ask, did Dr. Judd say he thought very favorably of the Belgian Contract, that he expected a loaded ship with emigrants from Belgium, in fulfilment of the Contract; that he made certain statements in reference to the proceedings against Ladd & Co. by the Government. He (Dr. Wood) states facts within his own knowledge, and these facts, in connection with Dr. Judd's agency in the Government, are natural concomitants, (companions, things collaterally connected) to the main fact in controversy, and they become original and not hearsay evidence.

The gentleman would try to institute a comparison, and make the case of Mr. De Fiennes assimilate to Dr. Wood's, but they are as different as black and white. Mr. De Fiennes was asked to the ef-

at whether he was an interested party, and Mr. Ricord proposed to show by Mr. Wyllie and Dr. Judd that Mr. De Fiennes had said at the time that he was interested. It was this fact that we were to get out of Mr. De Fiennes. We do not propose to show by Dr. Wood what was the fact,—whether the King was to ratify, or whether he was not to ratify the contract, or whether Dr. Judd said he was to do so, because that would be hearsay evidence,—for Dr. Wood would have derived his intelligence from Dr. Judd's words; if we want to ask him, did you expect the Contract to go into operation; did you expect a ship to come out here? These are facts that Dr. Wood would know of his own knowledge. They are original evidence; there is no hearsay about it. What I wanted and meant to introduce Dr. Wood for, was to prove that fact. This distinction between original and hearsay evidence appears to me as evident as possible. It does appear to me so plainly laid down, that no man with eyes in his head can fail to see the applicability of the authority to the case in question.

Mr. Ricord rose and said:—

I do not know that I am entitled to occupy more of your time, but it seemed to me that it would be most unjust to introduce evidence to show what a third person said concerning my client. They have not proved that the person had a right to make that assertion, and I cannot admit that you have any right to take any such evidence under a compact by which all the proceedings may go to an umpire by possibility. But the compact provides for your excluding illegal testimony upon the motion of the opposite party. I object to evidence being brought forward with regard to what Dr. Judd said to Dr. Wood concerning his own feelings, without my having the opportunity to cross-examine him, for I have a right to ask Dr. Judd by what authority did you make that remark? how came you to suppose there would be a vessel? how did you know that one was expected, or that ratification of the contract was necessary? I have already shown from authorities, that before the declarations of an agent can be taken against his principal, he must be proven to be an agent, and from that view, I suggested, the test of the *voir dire* which was resorted to in a case of Mr. De Fiennes. I can see no other motive for excluding a witness, than that of pecuniary interest, which does not apply to Dr. Judd. You have previously decided that a money interest is the only one to exclude, and if you now decide that bias is sufficient, you decide against your own decision and against the books. I make no question but that if Dr. Judd had conversation with Dr. Wood, he will state the subject of it. The questions are plain. Did you say so and so? Ladd & Co. can so shape their questions as to extract the whole matter from him, and his refusal to answer, would be to our injury. If he refuses to answer, it will be for a cause, and he will give the reason. If it were on account of self crimination

or self interest, you would of course reject it; but if he gave no good legal cause for it, he would be compellable to answer. We hold to this broad doctrine.

By the rule which the gentleman has laid down, it would exclude every corporator of every corporate body, from giving evidence in connection with that body, and he has gone into a long explanation, to show that this Government is a corporate body. Grant that it is; there is not a corporate body that does not act by its agents, and yet all those agents are receivable for, or against the corporation, throughout all the world. I see no more reason for excluding the members of this Government, than for excluding the members of the Manhattan Bank, or any other Bank, from testifying to matters relating to their several corporations. I entirely object to any conclusion drawn from Mr. Ten Eyck's reasoning, on the score that I should not have an opportunity to cross-examine the party said to have made the assertions, and that I could not ask him his authority for making those assertions. This is the only reason for excluding hearsay evidence, the impossibility of cross-examination.

I did not object to Mr. Wood as a witness, at the outset, because I wished to exclude no facts from your knowledge, although, I might with great propriety, have done so, upon the score of interest. I could exclude him, from his having mortgages amounting to \$24,000, upon property which has been bartered away, for a consideration namely: the consideration which you may award Ladd & Co. He has a solid, monied interest, and is to receive a portion of the award, whatever it may be.

Mr. Ten Eyck. He has no interest in the result, for he is secured.

Mr. R. I do not know that he is actually. You now want to introduce a party pecuniarily interested, to prove what was said by another individual, not a party.

Mr. T. It has not been proved that he has any interest.

Mr. R. But I say, he has in the same way, that you asserted of Dr. Judd.

Mr. T. No, but I read that from the report.

Mr. R. And I will read from the report, the fact given in evidence, that Dr. Wood is brother-in-law to Mr. Hooper. I only bring up that as a parallel. Mr. Ten Eyck says Dr. Judd is interested, and I say that Dr. Wood is also interested.

Mr. T. I only said that Dr. Judd was a party to the record.

Mr. R. His name does not appear on the record, the parties are named the King and Government.

The Court was then adjourned to Saturday, 17th of October, at 10 o'clock, A. M.

#### FIFTEENTH DAY.

Saturday, 17th October, 1846. The Court met again this day.

**Mr. Ricord.** I appear before you gentlemen, this morning, partially prepared, with a scanty provision of notes and references to the books. Owing to my time being so much occupied in other ways, I have not been able to do justice to the present question before you. It is a question of vital importance to my client. The manner in which it is decided, will be of vast importance also to your credit as arbitrators.

The question open to your investigation, had its origin thus:

On the 5th of October, when Dr. Wood was called to the stand by Messrs. Ladd & Co., Mr. Ten Eyck began to question him in regard to what Dr. Judd had said on a particular occasion. To this I formally objected, as hearsay, upon the ground that the declarations or acts of Dr. Judd were not admissible in evidence against the Government, unless Dr. Judd were first proven to be the agent of Government, to do those acts or make those declarations and admissions. A day was assigned us for arguing this question, which having been carefully done on both sides, and you having divided in opinion, Mr. Ten Eyck withdrew his question, and thus absolved you from pronouncing upon its legal propriety. He has now tacked ship, and is trying to beat to windward, by complying with the principle of law, rendering it necessary to prove the agency of Dr. Judd. But now, he offers to do this by the past evidence of Dr. Judd's acts and assertions. This we equally object to, as not the highest evidence which the nature of the case admits of; there being documents and recorded commissions within the Government archives, including all the evidence on such a point, by which Dr. Judd's agency can be proven. This has always been attainable to Ladd & Co., if they had demanded it. Until they do demand it, and are refused, Ladd & Co. are bound to prove the agency of Mr. Judd, by the commissions themselves. If upon demand those commissions were refused, then the parties demanding, may go into the public rumors and common understanding, or in other words, secondary evidence, for such proof; but not till such demand and refusal. The impossibility of producing the primary evidence must be brought home to the party, who has, and refuses to furnish it. (Peake 99, and 1 Starkie, 620.) But in a case like this, when the parties upon whom the proof of agency devolves, have obtained the existing documentary evidence, without application or demand, and manifestly contrary to their wishes, there ceases to be any need of parol or oral proof; while there arises a presumption against them of some wrong intention.

The powers of Mr. Judd are now confined, contrary to Ladd & Co.'s wishes, to the wording and intent of the documentary evidence. Ladd & Co. have filed before you such evidence of Dr. Judd's commissions under the great seal of the Hawaiian Islands, showing him to have had civil appointments at different times under the Crown.

1st, That he was appointed to correspond with Messrs. Richards and Sir George Simpson, the Hawaiian Commissioners in Europe. 2d, That he was appointed interpreter and recorder, in September, 1842. 3d, That he was appointed to act for the King in connection with the British Commissioners, Messrs. Lord George Paulet and Lieutenant Frere. 4th, That he was appointed a member of the Treasury Board under the law of 10th May, 1842. 5th, That he was appointed to act as Secretary of State for Foreign Affairs, with the avowed object of corresponding with the foreign representatives at this Court. 6th, That he was appointed Minister of the Interior, under Kekauluohi, and 7, That he was appointed Minister of Finance, the office he now holds. [See App.—Doc. X, 1 to 8.]

Mr. Ten Eyck. There is one more. There is one appointing him to assist the Governor.

Mr. R. All these commissions speak for and clearly explain themselves. There is no ambiguity in them which I can discover. They have all expired or have been superseded except the last. They succeeded each other, and terminated each other by the law of appointment and supersedure. The power to correspond with Messrs. Richards and Simpson, was confined to certain objects, and ceased with the return of Mr. Richards to this country, on the 23d of March, 1845. The power to represent the King in the British commission, ceased with the withdrawal of Mr. Judd from that commission, on the 11th of May, 1843; but it was specific while it lasted. The power to act as a member of the Treasury Board, of course ceased with the dissolution of that Board, on the 20th August last. It was confined expressly to an act of the Legislature, in the following words:

### PROCLAMATION.

(Page 178, Laws of the Hawaiian Islands.)

“Know all men whom it may concern, that from and after the current month, all Government property shall be set apart by itself, and shall be entirely at the direction of the National council, and no portion thereof, shall be appropriated, except by consent of this council. Neither the King, Premier nor Governor nor any other person, can take for his own personal use, any Government Property, and all such Property shall be committed to the care of a National Treasury Board.

And it is hereby proclaimed that the Government will never pay any debt contracted even by His Majesty the King, nor by the Premier nor by any Governor, nor by any other person, unless the debt be contracted through the Treasury Board, and the obligation have the signature of the King and Premier.

Whoever contracts a debt, he alone shall be liable for the debt, and his property alone shall go for the payment of it. And lest there



should be mistaken opinions as to what kind of property may be seized for the payment of debts, it is hereby clearly proclaimed that **lands and fixed property upon them can never be sold at auction, neither can they be permanently transferred.** They cannot even be leased for years without the consent of the King and Premier. This kind of property therefore can never be seized for debt, for the Government has never relinquished its right to the soil. But nevertheless, if a man have no personal estate, the land and fixed property upon it may be sold at auction on this condition that no person can be the purchaser except a native born citizen; and the right of him who purchases in this manner shall be the same as the right of other natives to their lands.

And if any Governor, Judge, tax officer or any other Government agent, embezzle the Government Property, or appropriate it secretly to his own use, or whoever shall refuse to pay it over to the Treasury Board; whoever shall do any of these things shall be punished as in case of Theft, to be tried and convicted by a competent court.

So also in case of speculation, embezzlement or fraud in the Treasury Board, or in either of them. He or they shall be tried as in case of theft, and on conviction shall be liable to the same punishment.

This proclamation having received the approbation of the Nobles and Representatives, we have hereunto set our names this tenth day of May, in the year of our Lord one thousand eight hundred and forty two, at Lahaina, Maui."

(Signed) KAMEHAMEHA III.,  
" KEKAULUOHII.

The power to act as Secretary of State for Foreign Affairs ceased with the appointment of Mr. Wyllie, and the elevation of Mr. Judd to that of the Interior, on the 26th of March, 1845. In this last commission of Mr. Judd, the division of powers is also expressly recounted. This power to act as Minister of Interior, is well defined and guardedly limited to those of the interior affairs of the Kingdom only, terms well understood by every statesman. These powers, in turn, lasted only till the present organization of the Cabinet, when Mr. Judd was appointed to be Minister of Finance, which office has limited and defined duties under the new code, of which I submit to you a copy, explanatory of this and other points, to be presently considered. [See vol. 1, New Laws.]

Within the legitimate scope, or natural limits of those delegated powers, he could bind the Government by his acts and concessions; while those powers severally lasted; but to pretend that he could go farther, and bind the Government beyond the scope or field of his written authority, is monstrous in the extreme, and opposed to all the legal doctrines on that subject. Sec. 2, of Kent, p. 619. There is

an important distinction between the powers of a general agent and one appointed for special purposes.

This view is supported by Story, on agency, sec. 17, 18, 21 and 22, which tend to show that evidence is inadmissible to fasten upon the principal the acts of his agent, and that it matters not to the principal as between him and a third party, whether excesses have been committed by his agent or not. Neither is the principal bound to ratify or disavow unauthorized acts, immediately upon hearing of them, but he may take time to consider of them. *Minor et al. v. The Mechanic's Bank of Alexandria*, 1 Peters, 46, and Story on agency, sections 239 and 243, and 9th Peters, 629, decided by Judge Story. Such excesses of authority may affect a third party, but they are irrelevant to a question of the principal's accountability, for the party transacting business, is bound to know how far the authority of the agent goes with whom he deals.

The question before you is one of my client's accountability to Ladd & Co.; any excesses of authority, therefore, on the part of any agent specially appointed by my client for particular purposes, have not the effect to bind my client, and not having that effect, they are irrelevant to the issue and evidence respecting them, ought not on that account to be received. In proof of this, I will cite Story on agency, sec. 76, in the following words:

"We have already seen, that, where the agency is created and confirmed by a written instrument, the nature and extent of the authority, must be ascertained from the instrument itself, and cannot be enlarged by parol evidence of the usage of other agents in like cases, or of an intention to confer additional powers; for that would be to contradict or to vary the terms of the written instrument. And in connection with this doctrine, it is often stated, that an implied authority cannot, in general, take place, where there is an express authority in writing; for the maxim is, *expressum facit cessare tacitum*."

When no written powers exist, the same doctrine prevails of confining the principal's accountability to the scope of a particular class of business. This is affirmed by Rand's edition of Long on sales, pages 389 and 397, and Story on agency, sec. 17, 22, 115 and 125.

My object is to narrow down that immense subject called agency, which I am afraid has taken possession of your minds in such a way that you think it to comprise but one point, whereas, it consists of an immense number of points, constituting in itself a science. As in the science of law, there are many branches, such as chancery, conveying, practice, &c., &c.; so in agency, as a doctrine. A man might call himself a lawyer, but you would ask what kind of lawyer?

So, likewise, in the science of medicine; a person might consider a physician to be a surgeon, although there is a broad distinction between the scope of the duties of those practitioners. That there may be no mistake in this matter, I beg also to refer you to Judge

Oliver's summary of the law of agency, page 141, in which he speaks of the appointment and authority of an agent, and also page 142, of same author, according to which, devolves upon those who would afterwards benefit themselves by the act of a third party, the *onus* of making good the right of the third party, to do the act.

That there may be no doubt that when there is a written power in existence, such power must be introduced, and is the highest legal evidence; that all acts exceeding that power are illegal excesses, by which the principal is not bound, unless he happens to rectify them, and that they cannot, for that very reason, be given in evidence against him; I wish here to call your attention to what Mr. Starkie says, 2d vol., p. 41.

"Before the act of B can be given in evidence as the act of A, it must be proved that B was the agent of A, to perform that act."

The author adds, "This proof may be direct, as where the agent is called as a witness, and proves that he was authorized to do the act or transact the particular business."

This is the first or highest evidence, after the evidence of written appointment. The same author at page 45, asserts, "The agent himself must be called to prove any facts within his knowledge," for which Mr. Starkie cites the case of *Ashford v. Price*, 3 Starkie's cases, 185, in which Lord Kenyon decided it to be indispensable thus:

"The question was, whether the defendant, the purchaser of goods, had agreed to find bags for the carriage of them; according to the report of the case, the plaintiff offered in evidence the letter of the broker who sold the goods, (being the plaintiff's own agent,) written to the plaintiff, saying that the bags would be ready by a certain day; the Broker was then in the Box, and Lord Kenyon said, that he would admit evidence of what he had done on account of the defendant, but that it should be learned from himself, and not from his letter."

I beg leave also, in further illustration and proof of the fact, that the agent himself, is the highest evidence after his agency has been proven by the highest evidence, to cite also from Peak's law of evidence, page 171.

"Where a person generally entrusted his son to receive money for him, who did so, and delivered it to the defendant; in an action of *Trover* to recover it, the son was held a good witness." Salk., p. 289.

"A sells goods to B, and afterwards C desires D to pay A, and promises to repay him; D pays A and afterwards B allows the money to D in account. In an action against C, B was called to prove the account, and it was objected that the contract being originally only between A and B, B was still liable to A, and was therefore swearing to discharge himself; but the chief-justice said he would allow him

to be a witness, to prove the payment, as he was a servant to C." *Brownson v. Avery*, 1 Stra., 506.

"A factor who was to have a poundage, according to the amount of the sale, was held a good witness to prove the contract in an action by his principal." *Dixon v. Cooper*, 3 Wills., 40.

"A factor who was to have all above a certain sum, was admitted to prove a contract above that sum, for this was still in the ordinary course of business." *Benjamin v. Porters*, 2 H. Blk., 590.

"A having received money as for the use of B, was admitted, in an action by B for the money, to prove that he was agent." *Ilderton v. Atkinson*, 7 Term R., 480.

"The Captain of an Indianan having borrowed money of the plaintiff, was permitted to prove it borrowed for the use of the ship, in an action against the owners, by his own evidence." *Evans v. Williams*, 7 Term R., 481. And numerous other examples.

These cases go upon the principle which I have already several times adverted to, that the highest evidence which the nature of the case admits of, must be produced; in confirmation of which, I will refer you to *Starkie*, page 500, and to *Peake*, 56, from which last it will be seen that copies of State documents like the commissions adduced, under the great seal, are primary evidence.

I should be very much at fault if I attempted to prove at Washington some fact, by secondary evidence, of which documentary evidence existed in the Government archives, without having first demanded copies.

I introduced certified copies of Mr. Judd's commissions, to amply apprise this board that such things existed, and Mr. Ten Eyck took them and adopted them for his own. These are now before you and speak for themselves. I would simply remark in passing, that they are under the great seal of the Government. I have already cited *Peake* on that point, and I now beg to refer you to *Story's conflict of laws*, 530, on the same subject.

Many little questions arise, which have, however, to be argued at prodigious length.

Blackstone is an admitted authority in the courts of any country. Let us inquire what he says of the specific and limited powers of an agent, and how far the acts of an agent bind the principal. See *Commentaries*, vol. 1, page 341. He treats them under the general name of master and servant, and his able anotator, Mr. Jos. Chitty, has added some useful notes. Lest there should appear any want of unanimity among authors, on the score of the limit of powers to the words of the appointment, when there happens to be a written one, and to the scope of the particular business, when there happens not to be a written power, I will next call your attention to the adjudications of the sages of your own country, the United States, and its courts, and of the highest of these, the Supreme Court, when presided

over by Chief Justice Marshall, than whom no greater jurist has ever flourished in that court. See 1st Peters Rep., 264; 5th Wheaton, 326; 12th Wheaton, 408; 7 Cranch, 299; 4th Wash. C. R., 280.

In further confirmation of this, hear Mr. Story on agency, who of course was one of the judges who came to the several decisions of the Supreme Court already adduced, he being on the bench of that Tribunal, at the terms of those decisions. Story on agency, sec. 17, 18, 21, 22 and 115.

These passages define agency as being either general or special, and also, who is a general agent. I know there has been a confusion raised in your minds by those words *general agent*, and I want by citing these authorities to undeceive you. The counsel on the other side has bred this confusion by his way of using these words.

Thus much regarding the transactions of private individuals by procuration, both written and implied, as manifested from the existence or absence of written powers. But the law recognizes a still farther distinction between the acts of private persons and the acts by proxy of private corporations, such as banks and other private bodies, politic and corporate. These have constitutions called charters, which define the scope or field of the powers of the body politic, and define the range of the official rights, duties and powers of its officers, who are its agents. It will be seen by reference to the authorities, both English and American, that while the acts of those corporate agents, within their particular scope, bind the corporation, any deviation from that scope is not the act of the corporation. The corporation is not bound by such deviations, but the agent renders himself personally liable. *The Bank of Columbia v. Paterson*, 7 Cranch, 299, and 12 Wheaton, 40.

Corporations must act by agents. Story on agency, as to Banks, sec. 114 and 115.

These doctrines supposes the scope of the agents power to be bounded, first by the charter, and next, by his duties under that charter. An insurance company cannot do banking business unless banking powers are expressly conferred by the charter, and any such attempt on the part of any of its officers, would be an excess of that officer's authority, be he President, Director, or Secretary, which would not render the corporation liable for losses incident to the banking operation. But if the illegal act were formally authorized by the President, Directors and company of the corporation, in the regular course of its transactions, by vote and minute, at some corporate meeting, it would then be the act of the insurance company for which the charter could be annulled by *scire facias* or on *quo warranto*.

To subject a banking or other private corporation, to forfeiture bo-

cause of the unauthorized transactions, acts or declarations of one of its agents, is monstrous even in contemplation; yet such would be the effect of considering such act or declaration, the act or declaration of the corporation, without some more specific search into the scope of its agent's powers, than is applied to the private unwritten or verbal acts of agents of the class first considered, who act for private natural persons.

But there is still a higher order of bodies, politic and corporate, or persons in law in governments, whose acts of procuration are regulated the world over, and have been time out of mind, by a stricter rule of immunity. This exemption from accountability, is claimed by the United States, whose citizens are now contending with my client for injuries alledged to have been done by commissioned agents. The United States itself acts upon this rule of limited scope of power. *Lee v. Monroe*, 7 Cranch, 366.

Story on the Constitution, 3d vol., 154, shows even the United States, to be limited to the scope of the powers conferred by her written constitution. See also Story on agency, sec. 165, 166, and Com.'s Digest, C., 11, 14, 15.

The courts of the United have decided her not to be bound by the acts of her agents out of the scope of their delegated powers. Such I claim also, to be the rule of accountability here, at the period of this contract, and before and since. The Hawaiian Constitution was given, and promulgated both in English and native, on the 8th October, 1840, and every man is bound to know and act in view of the law of the land in which he lives. Story's conflict of law, 75.

That constitution, it appears, in evidence, was not lost sight of by Mr. Brinsmade, in negotiating the lease, of 1841, which preceded the Belgian Contract. That constitution declares who, and who alone, can act and bind the Government *virtuti officii*, or by virtue of office. I refer to pages 12 and 13, of the English version of the constitution, where the following passages occur:

#### “PREROGATIVES OF THE KING.

“The prerogatives of the King are as follows: He is the sovereign of all the people and all the chiefs. The Kingdom is his. He shall have the direction of the army and all the implements of war of the Kingdom. He also shall have the direction of the government property, the poll tax, the land tax, the three days monthly labor, though in conformity to the laws. He also shall retain his own private lands, and lands forfeited for the non-payment of taxes, shall revert to him.

“He shall be the Chief Judge of the Supreme Court, and it shall be his duty to execute the laws of the land, also all decrees and treaties with other countries, all however in accordance with the laws.

“ It shall also be his prerogative to form treaties with the rulers of all other Kingdoms, also to receive ministers sent by other countries, and he shall have power to confirm agreements with them.

“ He shall also have power to make war in time of emergency, when the chiefs cannot be assembled, and he shall be the commander-in-chief. He shall also have power to transact all important business of the Kingdom, which is not by law assigned to others.”

“ RESPECTING THE PREMIER OF THE KINGDOM.

“ It shall be the duty of the King to appoint some chief of rank and ability, to be his particular minister, whose title shall be *Premier of the Kingdom*. His office and business shall be the same as that of Kaahumanu I, and Kaahumanu II. For even in the time of Kamehameha I, life and death, condemnation and acquittal were in the hands of Kaahumanu. When Kamehameha I. died, his will was, ‘The Kingdom is Liholiho’s, and Kaahumanu is his Minister.’ That important feature of the government, originated by Kamehameha I, shall be perpetuated in these Hawaiian Islands, but shall always be in subserviency to the law.

“ The following are the duties of the Premier. All business connected with the special interests of the Kingdom, which the King wishes to transact, shall be done by the Premier under the authority of the King. All documents and business of the Kingdom executed by the Premier, shall be considered as executed by the King’s authority. All government property shall be reported to him (or her) and he (or she) shall make it over to the King.

“ The Premier shall be the King’s special counsellor in the great business of the Kingdom.

“ The King shall not act without the knowledge of the Premier, nor shall the Premier act without the knowledge of the King, and the veto of the King on the acts of the Premier shall arrest the business. All important business of the Kingdom which the King chooses to transact in person, he may do it but not without the approbation of the Premier.”

These powers the King and Premier now hold from the written charter of Government, granted in concert with, and founded upon concessions obtained from the chiefs. They cannot transcend these limits. To illustrate how the Premier understood these powers and duties, I will introduce a copy of the proclamation of Kinau upon her accession to office, in 1835. [See supplement to this speech.]

That the King and Premier can delegate those powers, there can be no doubt but the delegation should be commensurate with the original power, as formal as the parent act, that is by specialty, that is in writing and sealed. Notice then, where the constitution, (page 12 and 13) reposes the powers that Ladd & Co. contend Dr. Judd to have possessed.

Such is the only universal or general agency in Government matters, which the constitution creates, that can at all come within the meaning of Mr. Story's position in his admirable work on agency, sec. 21.

One would naturally be inclined to suppose, and to favor the idea, that such powers so disposed of, could not very well be placed in the hands of agents not expressly contemplated by that instrument; at least without the formality of a written delegation under seal. Such has ever been the understanding of the King and chiefs, and of the people too, who could be at all supposed capable of such appreciations. For, from the first employment of Mr. Judd, in 1842, till this day he has had eight different appointments each, of what has been conferred upon him by written and precisely expressed commissions from the King. So I may also add of my own appointments, which have also been in writing, and duly signed and sealed, as the law directs. I think there has not been a single exception to this rule in any case, where a foreigner has been appointed to office since the constitution, and lately, even the lowest of the native officers have been thus commissioned. It is untrue, and not a fact, that Mr. Judd ever did any act dehors his commission, that bound the Government; and it is equally untrue that Mr. Judd ever did any act at all importing responsibility to the King and Government, even within the scope of his written powers, without submitting such intended act to the King for his sanction, and obtaining his Majesty's signature or other written order from His Majesty for such act. Mr. Judd has never effected the loan of one dollar, either as President of the Hawaiian Treasury Board, or of the present Board of Finance, without first obtaining the veritable note from the King upon which to realize such loan. The British Government did not consider Mr. Judd to have had the powers of a principal in the Hawaiian Islands, on the 14th day of February, 1844, as Ladd & Co. now pretend; for the Treaty of Lahaina was negotiated with the King and Premier, in person, Mr. Judd acting merely as interpreter, between them and General Miller, who acted for Great Britain.

I produce to you as forming part of these remarks, the negotiations alluded to, duly authenticated. [See supplement to these remarks.]

The treaty negotiated with Thomas Ap Catesby Jones, anterior to Mr. Judd's appointment, will also evince the sole action of the King and Premier in such matters, at that early day. I append certified copies of it to these remarks. [See supplement.]

Mr. Ten Eyck. I should like to know what all these documents are for?

Mr. Ricord. To narrow down Mr. Judd's powers.

Mr. T. Then I object to their being filed. Mr. Ricord files them in evidence of certain facts. Now, he has a right to refer to documents and papers in his argument, but they are not evidence be-



fore the arbitrators, in defence of any thing which Ladd & Co. design to prove in regard to Dr. Judd's agency. I make this a point, that he shall not introduce *evidence* of any thing until Ladd & Co. have got through with their case. (The arbitrators who held the papers just filed by Mr. Ricord, here handed them to him.)

Mr. R. Have the arbitrators already rejected those documents, because the gentlemen objects to them being received as evidence? At all events keep them in your possession until I come to consider them; but I am content to have them taken as part of my argument.

Mr. T. If you use them as evidence on which you base your argument, I still object.

Mr. R. I file them as part of my argument.

It is also impossible that since 7th of March, 1844, that Mr. Judd could have had even inferential power *colori officii* to bind the King by conversations and admissions respecting the "*two certain contracts*" under this item of Ladd & Co.'s claim; because I have alone held that power since that time, as will be seen from this authenticated copy of a commission then conferred on me by His Majesty, which I here incorporate as part of these remarks, to show you this impossibility. [See supplement.]

Mr. T. I object to that as evidence, and to any argument based upon any such evidence. It would do perhaps, as rebutting evidence, after Ladd & Co. have closed.

Mr. R. I also turn to the Friend newspaper, there being no regular Government organ in those days to show that Ladd & Co., and every body else, must have been aware of my appointment.

*Extracts from the Friend of Temperance and Seamen, published at Honolulu, under date of 25th March 1844.*

OFFICAL.

#### BY ORDER OF THE KING.

Public notice is hereby given, that John Ricord, Esquire, an Attorney and Counsellor of the Supreme Court of the United States of America, having exhibited satisfactory credentials, has been duly commissioned to be the Attorney General of the Hawaiian Islands; he having taken the Oath of Allegiance to His Majesty. And that in future he will be resorted to by the Government for legal advice, in all matters affecting the interests of the Government of these Islands, and the rights of private individuals; and it is hoped that justice, according to the laws, will be promoted by this appointment.

This notice in the English language, is given more especially for the benefit of foreign residents.

(Signed) G. P. JUDD,  
Secretary of State for Foreign Affairs.

Dated 9th March, 1844.

HONOLULU, ISLAND OF OAHU,  
Government of the Hawaiian Islands.

John Ricord of Honolulu, an adopted subject of His Majesty, the King of said Islands, being duly sworn, doth depose and say upon his oath, that he will faithfully, honestly, and to the best of his abilities discharge the duties of Attorney General of said Government, according to the Constitution and Laws thereof, and in pursuance of His Majesty's Commission and Instructions issued to him under date of the 9th March, A. D. 1844.

(Signed) JOHN RICORD.

Subscribed and sworn to this ninth day of March, A. D. 1844, before me.

(Signed M. KEKUANA'OA.

The following notice was given in the native language, to the several Governors throughout the Kingdom:

*To His Excellency M. Kekuanaoa, Governor of Oahu:—*

SIR,—I am directed by His Majesty to apprise you and the high officers of the Kingdom generally, that under date 9th March instant, John Ricord, Esquire, a Hawaiian subject, has been duly commissioned to perform the duties of Attorney General of the Kingdom, and to give legal advice, if called upon, to any High Functionary of His Majesty's Dominions, in all the Departments, Legislative, Executive and Judicial. And should you find it necessary, in the discharge of the duties of your responsible office, to be advised concerning the foreign or domestic laws, Your Excellency is entitled to demand his services.

I have the honor to be your obedient servant

(Signed) G. P. JUDD.

Dated 9th March, 1844.

Mr. Ten Eyck. This is quite irregular; Mr. Ricord is introducing evidence to support his argument. These things would come very well as rebutting evidence, but he is introducing evidence in his defence before we have been permitted to make out our case. The point now to be determined is whether Ladd & Co. shall be permitted to introduce evidence of Dr. Judd's general agency.

Mr. R. I am rebutting your argument of last Saturday.

Mr. T. E. It is very irregular for Mr. Ricord to introduce evidence to rebut facts, before we have gone into evidence to prove those facts. He attempts now to disprove what is not in evidence, and I object to his introducing evidence until I have got through.

Mr. R. I will refer to an authority for the validity of the proclamations and notices in the Friend Newspaper:

Peake's Law of Evidence, page 82, contains the following:  
"When any public measure has been adopted by the Governor of this

country, (Great Britain) it is usual to announce such measure to the public, by means of a Gazette, which is published under the sanction and control of Government; and of any *act of State* so announced, this Gazette is of itself, sufficient evidence; the King's proclamations, addresses from the people to the Crown, and the like may be proved in this manner, without production of the proclamation, or address itself, for these being matters of public notoriety, communicated to the public in a known prescribed form, the law pays such attention to the established rules of office, as not to call for higher evidence than that to which all mankind look for information on the subject."

Mr. T. That is precisely the thing that I object to, now he is reading law to show that this is evidence.

Mr. R. I will withdraw it as evidence, but still I will quote it.

Mr. T. He has no right to disprove what he assumes I may prove by and by. He is going into the defence of the case before Ladd & Co. have got through with their evidence, in support of their affirmation.

Mr. R. Mr. Ten Eyck says I have no right to introduce authorities to support my position.

Mr. T. That is not the point.

Mr. R. I want to show that I have superseded Mr. Judd, and therefore, I am and he is not the person to make admissions affecting the item of Ladd & Co.'s claims under consideration. I produce my commission in proof of the authority that has passed to me from Mr. Judd.

Mr. T. Suppose Mr. Ricord had not that file of "The Friend" to read from, he would then insist, as a matter of course, upon the same principle, to introduce witnesses to prove the same fact. Is it any thing more or less than evidence of a particular fact—and what is the object of that particular fact? Why, it is to raise a presumption against evidence which I may, if you so decide, introduce. It is to disprove what I assert I can prove, if you will allow me to do so. He is going to do exactly as he did in the Brinsmade case, when he undertook to show that Brinsmade had no right to a jury, because his character was not worth a hundred dollars. Upon precisely the same principle, he is introducing evidence to show that Mr. Judd was not an agent, before I have been allowed to prove that he was such.

Mr. R. There is a misunderstanding. Mr. Ten Eyck proposes not to prove Mr. Judd to be an agent, but to fix upon my client the responsibility of any excesses of his authority, which he may have committed. All I contend for is that two things cannot occupy the same space at the same time. This is an axiom equally applicable to the science of physics and the science of law. There is an incompatibility between Mr. Judd's alleged acts and the rights in action of the Government, after my appointment.

Mr. T. All I object to, is the introduction of evidence to sustain his argument, or for any other purpose, until Ladd & Co. have closed their case.

Mr. R. And what I contend, is that the acts of Mr. Judd could not bind the Government after any accession to an office, in which superseded him. I refer to Story on agency, section 463, in evidence that a principal has the right of revocation at pleasure, to section 470, in evidence of when revocation may be considered to have taken place, and to section 474, in evidence of what amounts to a revocation, one manifestation of which he asserts, to be the appointment of another to discharge the same duties.

Mr. T. Mr. Ricord is arguing upon the presumption that there is evidence before you, and he introduces that book, "The Friend," to show that the King had withdrawn his confidence from Mr. Judd and given it to him.

Mr. R. I shall continue to argue, and you may object as much as you like. Now I contend that if ever Mr. Judd's admissions were those of the King and Government, they certainly ceased to be so from the day an officer, whose official duties comprised the particular powers necessary to make admissions, and to do acts affecting the Belgian Contract and the Lahaina Contract, was appointed. Mr. Judd from that day became in contemplation of law, a stranger to all the choses in action, and rights in action of the Hawaiian Government, and I refer to 1 Starkey, 59.

"Neither in general, ought any inference or presumption to the prejudice of a party, to be drawn from the mere acts or conduct of a stranger; for such acts and conduct, are but in the nature of declarations or admissions, frequently not so strong; and such declarations are inadmissible, for the reasons already stated. An admission by a stranger cannot be received as evidence against any party; for it may have been made, not because the fact admitted was true, but entirely from motives and under circumstances collateral, or even collusively, and for very the purpose of being offered in evidence. On a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and his acts, conduct and declarations, are evidence against him; but it would not only be highly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers."

Who does not know the legitimate scope of the duties of a recorder and interpreter? Then refer to his acts as such, and they are specified in the law, creating the recorder and interpreter, which law states the reason and object of his appointment to that office—all acts done within its reasonably implied scope, are doubtless binding on the principal. Who does not in like manner know the duties of a Secretary of State for Foreign Affairs? The books define them, and within that defined scope, the acts are valid. They certainly do not

omprise recording or interpreting or finance, for these are not the legitimate field. To introduce evidence to show as acts of Government, that a duly commissioned Secretary of State, expressly appointed to correspond diplomatically with the accredited agents of other powers, had made admissions touching the title to lands, or had expressed his private desires, that a contract go into effect, in which private persons and the Government were concerned, or had ordered a sale on execution, when there existed a law officer of the Government duly appointed to attend to the inchoate rights in action of the Government, is, to my mind, most preposterous, and no court of law, or equity, would sustain such a supposition for a moment, or consider those acts, by any inference, as the acts of Government.

The law cited to you by Mr. Ten Eyck, is well calculated to bewilder and confuse gentlemen whose attention has not been turned to legal considerations. He read to you from Story on agency, sections 89, 91, 93 and 108, which the author of those sections (Mr. Story) says are examples of the implied or inferential powers of an agent created by word of mouth, or by tacit consent, or by the accident of position, or by acquiescence; but always without writing. Had Mr. Ten Eyck read to you, before citing those instances, the 88th section of that author, which precedes all those instances, you would have seen this clearly. Mr. Justice Story had just finished considering the extent, limitation and proof of written powers, which are of a higher order, than simple, verbal or implied agencies, and coming to descant on agencies of an inferior order, he gives the examples quoted by Mr. Ten Eyck. But there is no doubt of the existence of written authorization in this case, for Mr. Ten Eyck has himself introduced it, and therefore, the 76th section of that author alone applies. The acts to be proven, had ceased to come within the scope of Mr. Judd's authority, as the law calls it, and I deny, disavow and repudiate any that do not; not as voidable, but as void *ab initio*. I wish to show that Mr. Judd was a stranger to this transaction.

Mr. T. I must again interrupt.

By the Board. This is not the question.

Mr. R. But I think it is.

Mr. T. I understand the arbitrators to have refused to allow Mr. Ricord to read the Friend newspaper as evidence of Dr. Judd's having ceased to hold a particular office.

Mr. R. Counsels arguments go for what they are worth, and what is not to the point, will not be taken into consideration.

Mr. T. I deny that council may argue upon facts. He said I proved that Mr. Judd was a stranger, but he has no right to prove any thing until Ladd & Co. get through. They are the plaintiffs here. Will the arbitrators allow him to go on and argue upon the presumption, that he has proved certain things to be facts.

Mr. R. Now I am going to argue that the acts of a stranger cannot be binding. My argument has pertinency to the question. What seems to me strange, is that Mr. Ten Eyck having himself introduced here the commissions of Mr. Judd, as the highest evidence of his powers, should now seek to explain and enlarge the words of documentary evidence by acts of excess, which he alledges the agent to be guilty of. He is estopped from doing this, by the rules of law already quoted, but most particularly, by the rule of the very book to which Mr. Ten Eyck clings with the most affectionate tenacity. I mean Mr. Justice Story on agency, section 76 and 81, who there lays it down to be the undeniable rule of law, that when a written power does exist, and is introduced in evidence, such written authority explains and speaks for itself, and cannot be construed beyond the legitimate scope of its particular agency, by parol evidence. I hold, therefore, as a right due me and my client, to confine Ladd & Co. to the phraseology of the powers which they have introduced. Those powers, negative in themselves, the very supposition that Mr. Judd possessed unlimited powers of action, at any time, from the first day of his accession to office, 1842; for from that date down to this, these written powers were infringements, curtailments and limitations to any universal, verbal power, to do and to say every thing *ad libitum*, in all matters, indiscriminately. A power is defined to be a limitation—a constitution is a limitation—and a commission is a limitation. With written limitations to Mr. Judd's power, introduced here by Mr. Ten Eyck himself, are you prepared to confer upon Mr. Judd unlimited power, contrary to the constitution and laws of this Kingdom, which even renders the Premier's acts of no effect, until the King has sanctioned them; contrary also, to all the rules of law and equity, applicable to agency and authority and proxy and powers; which rules are the very rules according to which the parties to the compact have agreed to bring before you their controversies to be tried, and the very rules, which, in the presence of Almighty God, you have sworn to measure our rights by? We spread here upon the record, our most formal disapprobation of and exception to any such flagrant departure from the rules and principles both of law and equity. But beyond all this, we have the authority of the Supreme Court of the United States, 9 Peters 607, for saying, that even supposing Mr. Judd to have possessed unlimited powers, he could not have done more than the King himself, in regard to those contracts. The King's own ratification of them at any time prior to Mr. Brinsmade's arrival here from Europe, (21st March, 1846,) would not have been obligating on the King, for the King, until that moment, knew none of the particulars of the contranct. An authentic copy of it was never brought into the country, and none was ever presented to him so that he could know its details or what was required of him. See on the subject, *Lorraine v. Cartwright*, 3 Washington's C. C. R., 151.

A ratification of the unauthorized acts of an attorney in fact, without a full knowledge of all the facts connected with those acts, is not binding on the principals. No doctrine is better settled on principle and authority, than this, that the ratification of the act of an agent previously unauthorized, must, in order to bind the principal, be with a full knowledge of all the material facts. If the material facts be either suppressed or unknown, the ratification is invalid, because founded on a mistake." *Owings v. Hall*, 9 Peters, 607.

If the King's own acts would not, under the circumstances, bind him, how could Mr. Judd's, even if he had possessed the power which Messrs. Ladd & Co. ascribe to him? There is something so manifestly absurd, unchristian and inhuman in the attempt to fasten on the devoted King of the Sandwich Islands, what the meanest slave man in any stronger, enlightened power, would not be submitting to in the lowest courts of justice, that I thank God I am not standing before the enlightened and moral world, as a plaintiff's attorney in this action. I thank God for being the humble instrument to effect such attempts. It is the only remuneration I shall receive, and that I thank God. I regret, however, that these sources of revenue are not unmixed with shame, at the dishonorable light in which they cause my native country to be reflected from this vast and boundless ocean.

Now, I claim for the King and Government, as a stipulated right, ceded to His Majesty by the Jones Treaty of 1826, (see supplement to the speech,) to enjoy the same rights and privileges here, which the United States enjoys as a Government, within her rightful jurisdiction. This has been conceded by the recognition of sovereignty on the part of the United States, and by the acts of recognition and treaties concluded with France and Great Britain. If the United States cannot be bound towards her citizens by the acts of agents not expressly authorized, then I claim that His Majesty's Government cannot be concluded towards the citizens of the United States residing within His Majesty's jurisdiction, by the acts or admissions of agents not expressly authorized to do such particular acts, or make such particular admissions. That is I claim national parity under the treaty and under the comity of nations.

The United States are not bound by the declarations of their agents, founded on a mistake of the fact; unless it clearly appear that the agent was acting within the scope of his authority, and had authority, in his capacity of agent, to make such declaration." *Lee v. Weir*, 7 Cranch, 366; Story on agency, section 314 and 230, and note.

But if I rightly apprehend the gentlemen on the other side, their object is this: having failed in obtaining your sanction to the admission of hearsay evidence of declarations, and conversations of a resident agent; tending to bind the Government until that individual proved to be such specific agent, they now ask you to allow them

prove his agency by particular acts, which they contend were **flagrant** excesses of the powers in writing, held by that agent, which powers in writing they have themselves introduced here in evidence. When they have obtained your sanction to this violation of the rules of law and evidence, and have thus, according to their misconceived calculation, disqualified Mr. Judd from testifying, they intend next to introduce their secondary evidence of the gossippings of Dr. Wood and others, which they think will thus have been rendered primary, and that they can introduce such private conversations in evidence of Mr. Judd's powers to act generally. Yet this is in direct contradiction of what Mr. Story asserts of the necessity of following written powers, strictly in order to bind the principal: *Treatise on agency*, sections 76, 165, 166, 169, 170, and of what Mr. Starkie lays down in regard to the declarations and admissions of a stranger, 1st vol., 59, already quoted.

Mr. Ten Eyck. All this argument is based on something which Mr. Ricord presumes to be in evidence. The very thing we are trying to satisfy you, we ought to be permitted to do, as yet, neither he nor the arbitrators know what evidence we are going to introduce.

Mr. Ricord. Mr. Judd being proven by them to have been an agent of Government, is a competent witness by the rules of law, and must be called. "Lord Kenyon said, that he would admit evidence of what the defendant's agent had done on account of the defendant, but that it should be learned from the agent himself, and not from his letter." *Ashford v. Price*, 3 Starkie's Cases, 185; also the numerous cases already cited from Peake's Law of Evidence, 171.

Mr. Ten Eyck. Please read on.

Mr. Ricord. (Having read or.) and there is no better man than the agent himself, to explain his understanding of the subject. Lord Kenyon would not receive any other explanation than that. The instances I have cited, show that directly he is proved to be an agent of the party, he becomes evidence of the best kind; and if they wish to prove his acts, they must prove them from himself, in order to allow us the lawful right, to apply to him the usual test of cross-examination, to arrive at his motives and the occasion of his conversation and his instructions, if any, authorizing them. We have utterly denied in our points of controversy, as filed on the 8th of August last. Mr. Judd's authority, and the authority of any other person, to bind the King in relation to the Belgian Contract. We foresaw this very ground, when filing them, and controverted the doctrine. We utterly object to the introduction of any evidence here, in enlargement of Mr. Judd's written powers, as openly in violation of the principles of law and equity, and consequently of the compact between ourselves and Ladd & Co., by which you are bound, in adjudicating our rights. We so object to it, independently of the question of hearsay and irrelevancy, and independently of our legal right of cross-



examination, which would thus be precluded. We so object, because he is, and ever has been, a limited agent, for whose acts we are not accountable, beyond the scope of the words of his commissions, and the natural scope or field of the officers, to which those commissions appointed him. And we protest against spreading upon the record of an investigation, to be conducted upon principles of law and equity, unlawful testimony, which, though it might not sway the minds and bias the judgment of arbitrators here who know the respective parties, might nevertheless, confuse the mind and enlist the judgment of an umpire fifteen thousand miles distant from the parties, and unacquainted with their actual position, motives and characters.

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## SUPPLEMENT TO MR. RICORD'S SPEECH.

[TRANSLATION]

### PREMIER'S PROCLAMATIONS CONCERNING OUR OFFICE.

July 5th, 1832.

Hear ye head men, and common people, and chiefs, and people from foreign countries: I make it known to you, the office which my mother held until her departure, is now mine. All her active duties and her authority, are committed to me. The tabous of the King, and the laws of God, are with me, and also the laws of the King. To hear (or be consulted in public transactions) belongs to me. Hear ye who have not heard, and know ye who have not understood. My appointment as chief agent is of long standing, even from our father (Tamehameha.) As to this man's elder brother and my elder sister, she was to be his chief agent, and as to this man, I am his chief agent, from the express appointment of our father. Hear ye who have not heard, and know ye who have not known.

This is another point; I make known to you according to law (or for the violation of law) shall be the loss or dispossession of land, we are now endeavoring to make our minds mature. All the people who occupied the possessions of my mother, are with me (or are mine) and it is proper that they continue as they are.

Ye people, this is the first exercise of my official authority, which will continue till the death of my body.

NA KINAU.

I hereby certify that the foregoing is a correct translation of the original, on file in this office.

R. C. WYLLIE,

Minister of Foreign Relations.

Honolulu, Foreign Office, 30th October, 1846.

## PROCLAMATION OF THE KING.

[TRANSLATION.]

July 5th, 1832.

Hear ye, ye head men, common people, chiefs, and men from foreign countries:

You have perhaps understood the proclamation of my (legal) mother

The office that was held by my guardian (Kaahumanu) until her departure, now belongs to my mother (Kinau) from Hawaii to Kauai. I am superior, and my mother subordinate over the whole, even to Kauai. She is my chief agent, (or the acting Queen.)

Those who enjoyed the lands belonging appropriately to my father, even down to the present time, are to make clear their acknowledgment of me. Heretofore, (during the time or office) of my guardian, I was not acquainted (or conversant) with the duties of Government, even till her late departure.

We two, who have been too young and unacquainted with the actual transaction of business, now for the first time undertake distinctly to regulate our Kingdom. Should I go away to those other islands, let there be no division or opposition here behind. Ye men of foreign countries, let not the laws be by you put under your feet; when you are in your own countries, there you will observe your own laws.

KAUIKEAOULI.

I hereby certify that the foregoing is a correct translation of the original, on file in this office.

[L. S.] R. C. WYLLIE, Minister of Foreign Relations.

Honolulu, Foreign Office, 30th October, 1846.

H. B. M.'s CONSULATE GENERAL, }  
Lahaina, February, 10, 1846. }

SIR,—Having presented my letter of credentials this morning, to the King of the Sandwich Islands, it is in conformity with my instructions, to request the formal sanction of His Majesty to the arrangements of the pre-existing difficulties made in London, between your commissioners and the British Government.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) WM. MILLER.

G. P. JUDD, Esq.,

Secretary of State for Foreign Affairs, &c.

A true copy, under my hand and seal, this seventeenth day of October, 1846.

[L. S.] R. C. WYLLIE, Minister of Foreign Relations.

COUNCIL HOUSE, }  
Lahaina, 12th Feb., 1844. }

SIR,—In accordance with your note of 10th instant, I have much pleasure in sending to you the solemn sanction of His Majesty, the King of the Sandwich Islands, of the settlement made in London, by his commissioners there, on the terms explained to them by the Earl of Aberdeen, in his letter of 12th September, 1843.

I have the honor to be, Sir,

Your most obedient servant,

(Signed) G. P. JUDD.

JO WILLIAM MILLER, Esq.,

H. B. M.'s Consul General for the Sandwich Islands, &c.

A true copy under my hand and seal, this seventeenth day of October, 1846.

[L. S.]

R. C. WYLLIE,  
Minister of Foreign Relations.

### RATIFICATION.

Be it known to all whom it may concern, that I, Kamehameha III., King of the Hawaiian Islands, do hereby approve, sanction, confirm and ratify the arrangements of the differences that had arisen between the Hawaiian Government and the British Government, as decided in London between my commissioners and the Government of Her Britannic Majesty, and in the terms stated by the Earl of Aberdeen, in his letter to our commissioners, dated 12th September, 1843.

Given at our Council House, this 12th day of February, in the year of our Lord one thousand eight hundred and forty-four, at Lahaina, Sandwich Islands.

(Signed) KAMEHAMEHA III.,  
KEKAULUOHI.

(Signed) G. P. JUDD,  
Secretary of State for Foreign Affairs.

A true copy, under my hand and seal, this seventeenth day of October, 1846.

[L. S.]

R. C. WYLLIE,  
Minister of Foreign Relations.

### CONVENTION BETWEEN GREAT BRITAIN AND THE SANDWICH ISLANDS.

The differences which existed between the Government of Great Britain and of the Sandwich Islands, having been happily settled,

the following articles of agreement have been mutually entered into between the King of the Sandwich Islands on the one part, and William Miller, Esq., Her Britannic Majesty's Consul General for the Sandwich and other Islands in the Pacific, in the name, and on the behalf of Her Britannic Majesty on the other part, for the preservation of harmony and the prevention of future misunderstandings between the two parties.

ART. I. There shall be perpetual peace and amity between Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, and the King of the Sandwich Islands, their heirs and successors.

ART. II. The subjects of Her Britannic Majesty shall be protected in an efficient manner in their persons and properties, by the King of the Sandwich Islands, who shall cause them to enjoy impartially, in all cases in which their interests are concerned, the same rights and privileges as natives, or as are enjoyed by any other foreigners.

ART. III. No British subject accused of any crime whatever, shall be judged otherwise than by a jury composed of foreign residents, proposed by the British Consul, and accepted by the Government of the Sandwich Islands.

ART. IV. The protection of the King of the Sandwich Islands shall be extended to all British vessels, their officers and crews. In case of shipwreck, the chiefs and inhabitants of the different parts of the Sandwich Islands, shall succor them and secure them from plunder. The salvage dues shall be regulated, in case of difficulties, by arbitrators, freely chosen by both parties.

ART. V. The desertion of seamen embarked on board of British vessels, shall be severely repressed by the local authorities, who shall employ all the means at their disposal, to arrest deserters; and all reasonable expenses of capture shall be defrayed by the captains or owners of said vessels.

ART. VI. British merchandise, or goods recognized as coming from the British dominions, shall not be prohibited, nor shall they be subject to an import duty higher than five per cent. ad valorem.

ART. VII. No tonnage, import, or other duties, shall be levied on British vessels or goods, or on goods imported in British vessels, beyond what are levied on the vessels or goods of the most favored nations.

ART. VIII. The subjects of the King of the Sandwich Islands shall, in their commercial and other relations with Great Britain, be treated on the footing of the most favored nation

Done at Lahaina, the twelfth day of February, one thousand eight hundred and forty-four.

(Signed) KAMEHAMEHA III.,  
 “ KEKAULUOHI,  
 “ WM. MILLER.

Signed in the presence of

(Signed) G. P. JUDD, Sec’y of Foreign Affairs,  
 “ R. C. WYLLIE, Sec’y to General Miller.

A true copy, under my hand and seal, this seventeenth day of October, 1846.

[L. S.] R. C. WYLLIE, Minister of Foreign Relations.

*Articles of arrangement made and concluded at Oahu, between Thomas Ap Catesby Jones, appointed by the U. S. of the one part, and Kamehameha III., King of the Sandwich Islands, and his guardians on the other part.*

**ART. I.** The peace and friendship subsisting between the United States and their Majesties, the Queen Regent and Kamehameha III., King of the Sandwich Islands, and their subjects and people, are hereby confirmed and declared to be perpetual.

**ART. II.** The ships and vessels of the United States, (as well as their consuls and all other citizens) within the territorial jurisdiction of the Sandwich Islands, together with all their property, shall be inviolably protected against all enemies of the United States in time of war.

**ART. III.** The contracting parties being desirous to avail themselves of the bounties of Divine Providence, by promoting the commercial intercourse and friendship subsisting between the respective nations, for the better security of these desirable objects, their Majesties bind themselves to receive into their ports and harbors all ships and vessels, of the United States, and to protect to the utmost of their capacity, all such ships and vessels, their cargoes, officers and crews, so long as they shall behave themselves peacefully, and not infringe the established laws of the land; the citizens of the United States being permitted to trade freely with the people of the Sandwich Islands.

**ART. IV.** Their Majesties do farther agree to extend the fullest protection within their control, to all ships and vessels of the United States, which may be wrecked on their shores, and to render every assistance in their power to save the wreck, and her apparel and cargo, and as a reward for the assistance and protection which the people of the Sandwich Islands shall afford to all such distressed vessels of the United States, they shall be entitled to a salvage, or a portion of the property so saved, but such salvage shall in no case exceed one third of the value saved, which valuation is to be fixed

\* Now styled Kamehameha III.

by a commission of disinterested persons, who shall be chosen equally by the parties.

**ART. v.** Citizens of the United States, whether resident or transient, engaged in commerce or trading to the Sandwich Islands, shall be inviolably protected in their lawful pursuits, and shall be allowed to sue for, and recover by judgement, all claims against the subjects of His Majesty, the King according to strict principles of equity, and the acknowledged practice of civilized nations.

**ART. vi.** Their Majesties do further agree, and bind themselves to discountenance, and use all practicable means to prevent desertion from all American ships which visit the Sandwich Islands; and to that end, it shall be made the duty of all Governors, Magistrates, Chiefs of Districts, and all others in authority, to apprehend all deserters, and deliver them over to the master of the vessel from which they have deserted; and for the apprehension of every such deserter, who shall be delivered over as aforesaid, the master owner or agent, shall pay to the person or persons apprehending such deserter, the sum of six dollars, if taken on the side of the Island near which the vessel is anchored; but if taken on the opposite side of the Island, the sum shall be twelve dollars; and if taken on any other Island, the reward shall be twenty-four dollars, and shall be a just charge against the wages of every such deserter.

**ART. vii.** No tonnage duties or imports shall be exacted of any citizen of the United States, which is not paid by the citizens or subjects of the nation most favored in commerce with the Sandwich Islands; and the citizens or subjects of the Sandwich Islands shall be allowed to trade with the United States and her territories, upon principles of equal advantage with the most favored nations.

Done in Council at Honolulu Island of Oahu, this 23rd day of December, in the year of our Lord 1826.

(Signed)	ELESABETA KAAHUMANU,
"	KARAIMOKU,
"	BOKI,
"	HOAPILI,
"	LIDIA NAMAHAHA,
"	THOS. APCATESBY JONES.

A true copy, under my hand and seal, this seventeenth day of October, 1846.

[L. S.] R. C. WYLLIE, Minister of Foreign Relations.

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#### J. RICORD'S APPOINTMENT.

Kamehameha III., by the Grace of God, King of the Hawaiian Islands, with the approbation of the Premier.

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To the chiefs, and all the people subject to my Government greeting:

Be it known that in order, carefully and scrupulously, to discharge the duties imposed on me by the constitution and laws of my Kingdom, whether legislative executive or judicial, and the more confidently to hold intercourse with other powers now in reciprocity with me, or that may seek to become so, as well as to afford impartial, legal advice, to all persons residing in my dominions.

I have constituted and appointed, and by virtue of the prerogatives incident to my Crown, and clearly implied by the constitution, I do hereby constitute and appoint my trusty subject, John Ricord, Esquire, to be my Attorney General of this my Kingdom of the Hawaiian Islands, during Royal pleasure, to do and perform any and all the acts and duties set forth and described in the annexed letter of instructions, given in the English and Hawaiian languages.

In witness whereof, I have hereunto set my name conjointly with the Premier, and caused the great seal of my Kingdom to be affixed, this ninth day of March, A. D. 1844.

[L. S.] [L. S.] (Signed) KAMEHAMEHA III.,  
“ KEKAULUOHI.

By the King,

G. P. JUDD, Secretary of State.

The foregoing is a correct and true copy of the original commission now in the archives of the department of law.

In testimony whereof, I have hereto subscribed my name, and affixed my official seal, this 16th day of October, A. D. 1846.

[L. S.] JOHN RICORD, Attorney General.

The above is the official seal of the department of law of this Kingdom, and as such, is entitled to full faith and credit.

In testimony whereof, I have hereto subscribed my name and affixed the great seal of the Kingdom, at Honolulu, Hawaiian Islands, this 16th day of October, A. D. 1846.

[L. S.] JOHN YOUNG, Minister of the Interior.

Mr. Ten Eyck. I do not care to follow Mr. Ricord's remarks through all their ramifications. A great deal has been said about our not wishing to introduce Dr. Judd as a witness. The fact is that he is an interested party, as will appear, if we are permitted to proceed. But that question does not arise here. The gentleman is continually arguing that there is something we do not want Mr. Judd to tell, and that we are afraid to introduce him. If they are not afraid that there is something rotten, why do they hold back? Why do they avoid us and not let us behind the scenes? Why

are they afraid to let us prove what Mr. Judd has said and done, as their general agent? We have a right to turn the tables upon them, and to answer them, that there is something rotten in the thing, which may reflect upon the character or conduct of this Government. Does it not look dark—does it not look as if there was something they did not like to have made public? If Mr. Judd is an agent of the Government and has exceeded his powers, then he is interested in this case, because Government may sue him for violating his instructions, for exceeding his powers. If the point comes to that, we may object to Mr. Judd on the ground of interest. The gentleman insinuates that Dr. Wood, and others, are coming here to retail certain private conversation. Look at the case of *Brinsmade v. Jarves*, and see what evidence is brought in there, and what the gentleman contended was legal evidence. All the table talk and gossip about town, was brought into court, to show that their character was not worth a hundred dollars. A more illegal and unjust proceeding I venture to say, never took place in any court, claiming to be a court of justice, in the civilized world. The gentleman's whole argument to-day, has been upon the assumption that certain facts have been proved. That is the point, whether you will admit us to prove certain facts. He assumes that they are in evidence, and upon that assumption his argument is based. The argument is now, whether you will permit us to come in with this evidence. He has gone upon the assumption that we were going to show what Mr. Judd had done here and there, and in the other place. The point is whether we shall be permitted to introduce that evidence. He talks about the Belgian Contract and his defence to it; but the time for that argument has not arrived, that will come up by and by. He lays great stress upon the fact, that no ratified copy of the contract was ever shown to the King. That is a matter over which Ladd & Co. had no control. The argument is an implied censure upon the King's Commissioners, for they ought to have brought him a ratified copy of the contract. I take the same books from which the gentleman has read, and will quote them, to show how inapplicable the mass of law which has been read, is to the case. The gentleman read from the 2d of Kent's Commentaries, page 619. We went through the whole doctrine of agency. That is just the thing we want to prove, whether Mr. Judd was a general agent or not. That is the very point we are trying to elucidate, and it is for you to say whether you will allow us to introduce our proof. I do not dispute the doctrine that Mr. Ricord has advanced, and to support which, so much law has been read. If you will only allow us to prove, or attempt to prove, our case the gentleman may come in and argue, and rebut our evidence, and maintain, that the acts, which we say Mr. Judd did perform, were not the acts which a general agent could perform. By and by, his argument may come in, and be very good. I will read from the same volume wick



the gentleman read, namely: the 2d of Kent, page 613. That is the very thing we want to prove. If we do not prove it, then it goes for nothing; but if we do, it makes in our favor. We want to show, if the privilege is extended to us of making the attempt, that Mr. Judd did certain things, and that the Government, by their tacit acquiescence, or otherwise, have acknowledged his authority or agency, and have thereby bound themselves. That is the point, whether you will allow us to prove his general agency. I read from Story on agency, section 18:

"Although there is a written authority, under which an agent is transacting business for, and on the credit of his principal, and therefore, persons dealing with him, and knowing that he is acting under such written authority, are bound to know the extent of his authority, and to inquire into its limitations; yet, if the principal, by his declarations or conduct, to such persons, has authorized the opinion, that he had in fact given more extensive powers to his agent than were confided, the principal will be bound by the acts of such agent, in their negotiations with such persons, to the extent of the authority, which such declarations and conduct have fairly led them to believe to exist." In support of this doctrine, Justice Story cites the case of *Schimmelpennich v. Bayard*, 1 Peters Rep., 264, where the Supreme Court of the United States lay down the same principle.

What more decided authority can I adduce in support of my position?

It may appear that the authority has been written, yet if by the conduct and acts of the principal, he can be shown to have recognized, in any way, the authority of the agent to transcend the powers, defined in his instructions, the principal is bound by his acts. We want to get behind those written powers, and show that Mr. Judd had certain other powers granted him by this Government, which he exercised, and which have been quietly acquiesced in by the Government of the Sandwich Islands. That is what we want to do, and the law says we may do it. My attention has been confined to this, whether we were allowed to prove any thing beyond the commissions. I intend to introduce witnesses to show what the gentleman's powers have been; but Mr. Ricord may show, perhaps, that Mr. Judd has exceeded his authority. Grant that he can. I ask, then, whether Mr. Judd is not bound to his principal, and if he is bound, is unanswerable to him in damages, and therefore is interested, and would not be permitted to testify. But take it upon the principle of competency, would Mr. Judd be a competent witness? I conceive that he would not be the best witness of the general understanding in reference to his agency. How are we to ascertain the general custom of this government, in transacting their business through their agents, but by old residents, and persons who have had dealings with government, through them, and who know what that custom has

been? Mr. Ricord has argued to show that we should not go beyond the written powers. Now, I have insisted, and still insist, that we may go beyond that written authority, to show what has been Dr. Judd's custom, and his general reputation in this community, in regard to his agency, for the Government. Greenleaf, sec. 394, says:

"In an action against the principal for damages occasioned by the neglect or *misconduct of his agent or servant*, the latter is not a competent witness for the defendant; for he is in general, liable over to his employer, in his subsequent action, to refund the amount of damages, which the latter may have paid."

Mr. Ricord. But we do not introduce Mr. Judd.

Mr. Ten Eyck. And we do not wish to be compelled to go into the enemies camp after evidence. It seems from what I have read, that he is not a competent witness for the defence, then, certainly, we are not compelled to introduce him.

Mr. R. He is not answerable over.

Mr. T. That is a new doctrine.

Mr. R. I have power to release Mr. Judd. I can enter a *non prosequi* in his favor.

Mr. T. That has, unfortunately, been too much the case in the management of government matters here. "I do this thing, and I do the other thing," and when the agent has committed the Government in any way, then the Government slips out of responsibility by denying that they are bound by Mr. Judd's acts, because we cannot show that he had written, defined powers, to do those acts, although the Government have never said nay, to any thing he has ever done. That is a doctrine, that I hope and believe, will not be sustained. In reference to agency, and the extent of authority, and the distinction made between general and special agency, Justice Story in his work on agency, section 127, says:

"The ground of this distinction, (between the case of a general agent and that of a special agent) is the public policy of preventing frauds upon innocent persons, and the encouragement of confidence in dealings with agents. If a person is held out to third persons, or the public at large, by the principal, as having a general authority to act for, and to bind him in a particular business, or employment, it would be the height of injustice, and lead to the grossest frauds, to allow him to set up his own secret and private instructions to the agent, limiting that authority, and thus to defeat his acts and transactions under the agency, when the party dealing with him had, and could have no notice of such instructions."

"In such cases, good faith requires that the principal should be held bound by the acts of his agent, within the scope of his general authority; for he has held him out to the public as competent to do the acts, and to bind him thereby."

"The maxim of natural justice here applies with its full force, that

he, who, without intentional fraud, has enabled any person to an act, which must be injurious to himself or to another innocent party, shall himself suffer the injury rather than the innocent party, who had placed confidence in him. The maxim is founded in the soundest ethics, and is enforced to a large extent by courts of equity."

In a note to the above, Justice Story says:

"The general ground on which this distinction is taken, is well stated in a note to Paley on agency, by Mr. Lloyd, page 199, note."

"A general authority, arises from a general employment, in a specific capacity; such as factor, broker, attorney, &c. When we can say of any one, that he is A's broker, or A's attorney, he has then a general authority, in the sense in which it is used in the text.

"A may give his attorney, &c., any instructions that he pleases, and the effect will be this, as between himself and his attorney, &c., any deviation from these instructions will render the latter accountable to him for any loss he may sustain thereby. But, as regards himself, and third parties, who may have dealt with the attorney, &c., any limitation of the authority not communicated to them, can have no effect. A third person has a right to assume, without notice to the contrary, that the person whom A employs generally as his attorney, &c., has also an unqualified authority to act for his principal in all matters which come within the scope of the employment."

And again, Justice Story in his own note to the text, says:

"The principle, which pervades all cases of agency, whether it be a general or a special agency, is this: The principal is bound by all acts of his agent within the scope of the authority, which he holds him out to the world to possess; although he may have given him more limited private instructions, unknown to the persons dealing with him. And this is founded on the doctrine, where one of two persons must suffer by the act of a third person, he who has held that person out as worthy of trust and confidence, and having authority in the matter, shall be bound by it."

"When I hold out to the public a person, as my agent in all my business and employment, he is deemed my general agent; and all acts done within the scope of that business bind me, notwithstanding I have privately limited his authority by special instructions. Why? Because he is externally clothed with an unlimited authority over the subject-matter, and third persons might otherwise be defrauded by his acts."

"In such case, he is not less a general agent as to third persons, than if he had received no private limitations of his authority. As between himself and his principal, his authority is not general, but, *quoad hoc*, is limited. In the same case if the principal had privately revoked his whole authority, he would still be bound," &c., &c.

Now Ladd & Co. wish to prove the facts respecting Mr. Judd's agency for the King and Government, and who shall they use as wit-

nesses for that purpose? Are they to be compelled to use the individual, who, according to the Attorney General's argument, has exceeded his authority, and made himself liable over to his principal in damages, for his neglect or misconduct.

Is it not likely that he will give a one-sided narration—that he will give such a coloring to his evidence, as shall tend to save himself from liability to his principal? I have shown to the arbitrators, by the 81st section of Story on agency, that when there is a written authority, under which the agent is transacting business, and the agent goes beyond that authority, without any sort of sanction from the principal, tacit or otherwise, we cannot in that case hold the principal responsible for the excesses of his agent; yet if the principal has authorized the opinion, that he has given the agent more extended powers than his writing intrusted to him, then the principal will be bound to the extent of the powers which parties had reason to believe his agent possessed. Now, I want to show that Mr. Judd was held out to third persons and to the public, as having certain powers, above what are contained in his several written commissions, and that the Government have acquiesced in his acts, that they have not objected to, or called in question, any thing he has said or done. If I prove these facts, then I come within the rule of law, and bind this Government to the responsibility of his acts. We want to show what Mr. Judd's general agency has been. If we do not show sufficient to bind the principal, we fail; but we want to make the attempt, and ask you to allow us to do so. Again, if the gentleman can bring evidence that Mr. Judd has exceeded the general scope of his power or agency.

Mr. Ricord. May I ask what particular thing you call the scope?

Mr. Ten Eyck. You will know when I have closed my proof on the subject.

Mr. R. Does it mar the latitude allowed him by those written powers?

Mr. T. Not if we can prove that he had more extended powers. They go as far as they do go. We intend, and expect, to show something without the scope of those written powers, something beyond them. It seems to me narrowed down to a very small point whether we may go into evidence, to prove that Mr. Judd had more extended powers than his written documents show. If he has been held out as having more extended powers, we hold the Government responsible, and the Government holds Mr. Judd responsible. This is the doctrine. Now, what does all this law, which I have read from Story's agency, mean? It means something or nothing, and Justice Story was not the man to write nonsense, absurdities or falsehoods. Why is it put in the books, and why did Justice Story write all this, if he did not mean to have it understood, that, in his opinion it was the law of agency. Besides, every page is filled with au

prities, cited by him, in support of the doctrine. Now, how are we to prove this general agency, unless by persons who have lived long in the country, and been accustomed to do business for and with the Government? Do not old residents, and the public, know what the usage of Government has been? Ladd & Co. must prove this general agency, by public understanding and custom, and cannot prove it any other way. If Mr. Judd has exceeded his authority, say again, it will bind the Government to Ladd & Co., and make them answerable over to the Government, for any misconduct, if the Government so regard his acts. Innocent parties are not to suffer, even if he has exceeded his authority, so long as the Government have tacitly acquiesced in, and acknowledged his general authority, their business agent. I have nothing to say, so far as the law read

Mr. Ricord is concerned. I think I can safely admit it all to be good law. I do not remember a single sentence, which he has read, that I would find fault with; but I want to prove the fact upon which my own argument is based. We want to go into testimony, to show how far Mr. Judd had authority. If we prove that Mr. Judd was a general, or, if you please, a universal agent, then the Government is bound by his acts, and they cannot get rid of their obligations unless they successfully rebut that evidence. In regard to the written commissions before you, I would simply remark, here, that by one commission, Mr. Judd is made *deputy King*, by another *deputy President*, and so on. We wish to show that the agent had even more authority, if possible, than that granted by his written powers. The extent of the authority of an agent, is to be measured by his usual employment in the business of his principal. This is what I wish to prove; what was his employment, and his usual business, in the service of his principal. We want to show what has been the custom in the matter, and how can we prove it, but by those who have been long resident here, and have done business with the Government?

Suppose you have a clerk, and he is accustomed to sign notes for you, one of which you refused to pay. Am I bound to sue that clerk for payment, because you say he has exceeded his authority? Not if I can prove by persons who have been in the habit of frequenting your store and doing business with you, that it has been his custom to sign notes for you, and that you have acquiesced in his so doing, and have paid such notes. If he has exceeded his powers, he is liable over to you, and you are not to give him secret instructions, to the injury of innocent parties, who may have been taken in by your apparent acquiescence in his acts.

How do you prove partnerships? How do you prove that the cashier of a bank was actually the cashier, but by general reputation? That persons have found this man at his place, that his checks have been cashed by the teller, &c., &c. If the cashier had exceeded his authority he would be liable over to the bank.

Is every body to suffer from the acts of a general agent, where that agent has been held out to the public, as the general business agent of Government, and the public have been in the habit of doing business with him, with that general understanding, because he has exceeded his authority?

I think you, gentlemen, will hardly, at this day, sanction any such doctrine. Let us go on then, with our testimony, to prove Mr. Judd's agency. When we get through, it will be time enough for the gentleman to show Mr. Judd's misconduct, if any, and that he has exceeded his authority. We make no such charge against him now.

The Court then adjourned to Monday, 23rd November, at 10 o'clock A. M.

#### SIXTEENTH DAY.

The Board met agreeable to adjournment, and the following decision was read.

When evidence was produced by Messrs. Ladd & Company showing the declarations of Dr. Judd, it appeared necessary to our minds, in order to make such testimony relevant, that the authority of Dr. Judd should first be proved. The question now left for our consideration is, whether Messrs. Ladd & Co. have permission to bring forward testimony to prove that authority by parol evidence, additional to the written authority received from the King and filed by Mr. Ten Eyck. We are of opinion, that from the condition of the Government at that time, that it would promote the ends of justice to admit such evidence, to see how far the public were properly justified in drawing that conclusion by general reputation.

Mr. Ricord. You have given your decision, and I beg leave here formally to except to it, and to put myself at issue upon it. I also repeat that I wish every remark taken down.

Mr. Ten Eyck. We would like to have Mr. Marshall sworn this morning.

Mr. R. I would like first to cross-examine Dr. Wood, and I have a right to do so.

Mr. T. E. We have no objection, but Dr. Wood is not in court. All the questions asked him were how long he had lived here, and if he knew Dr. Judd.

Mr. R. There were some ten questions, I think, put to him.

Mr. T. E. Will you read the questions that were put to him?

Mr. R. (After reading the questions put to Dr. Wood.) The witness has been introduced and the law is plain with regard to the right of cross-examination, and I claim my right to examine Dr. Wood.

Mr. T. E. I submit the matter to the arbitrators whether they will have him examined or not.

Mr. R. Here is my authority: "When the witness has been examined in chief the adverse party is at liberty to cross-examine him."

By the Board. That is very true, but it was through your means that Dr. Wood left the stand.

Mr. R. I did not object to Dr. Wood as a witness, but I objected to the question put to him.

Mr. T. E. We have not questioned Dr. Wood yet, we do not think it necessary to do so at present. Seeing Mr. Marshall in court we thought we would go on with him, and the question raised by Mr. Ricord I consider altogether out of place. I submit whether I have examined Dr. Wood—I did not examine him—Mr. Ricord interposed.

Mr. R. I objected to the nature of the question put to him, but I did not object to him as a witness.

By the Board. Under the circumstances, we think it was responsible upon us according to that rule, that the other party should have been notified of the witness being examined this morning, they may now be taken by surprise.

Mr. T. E. I should like to know how far that rule binds the other party—it says the arbitrators shall be notified.

Mr. R. I claim my right to cross-examine Dr. Wood, and if I am to be limited in examining him by the other party it will be something quite new. In examining in chief there is a limit, but cross-examination is not confined either to what has been elicited by the other party or to irrelevant questions.

Mr. T. E. I have no objection, but I hope the arbitrators will recollect why we did not go on with Dr. Wood's examination. The reason was, that the arbitrators decided we could not prove Dr. Judd's declarations or acts until we had proved his agency, and that is what we have been trying to get at.

Mr. R. Then I have no objection to intermitting Dr. Wood's testimony, and consent to their introducing him on a future occasion. But I have had no notice that Mr. Marshall would be called upon this morning, and I should like to have notice at this time that he will be called upon on some future occasion, in order that I may have time to prepare myself for cross-examining him by referring to the archives of my department. I wish to have time. I may have some things to ask him that I may find by examining the papers in my department. It was in that view that I prepared myself for examining Dr. Wood. I simply renew the motion that you yourselves made, in order that I shall not be taken by surprise and that I may know who is coming on the stand.

Mr. T. E. Then I ask whether we are bound to notify the gentleman under any rule of this arbitration. I shall object to any such construction of the rule. We may not want Mr. Ricord to know who the witnesses are that we propose to examine. It may be very important for him to know who they are, but I object to his having twenty-four hours notice. I do not want to put the witnesses in any

position where there shall be any chance of their being interfered with or influenced.

By the Board. But at the very commencement of the trial Mr. Brinsmade sent us a list of the witnesses.

Mr. T. E. But he did not send all. Mr. Ricord knows who are to be examined by that list.

Mr. R. I do not care for what purpose the witness is introduced, but I claim my right to cross-examine him when he is surrendered by the other party, and I would like to know therefore who is coming on the stand. I do not suppose that Mr. Marshall is likely to be influenced by any person with regard to what he is going to testify. I would like to know the meaning of that rule.

Mr. T. E. I do not ask the enforcement of any such rule in our favor, and I object to its being applied to us. We may not wish Mr. Ricord to know what witnesses are to be brought forward.

Mr. Brinsmade. I supposed the intention of that rule was, that time should be given to the witnesses to be called upon to appear, and not that the other party should have time to prepare for cross-examination.

Mr. Williams. There is no objection then to the examination of Mr. Marshall.

Mr. R. Do you mean upon that score?

Mr. Williams. Upon that or any other score.

Mr. R. I then object to Mr. Marshall—first, that he is an interested party—that he has a monied interest in the result of this arbitration, and I claim to examine him on his *voir dire*.

Mr. J. F. B. Marshall was then sworn as a witness by Mr. Hopkins.

Mr. R. I would examine him on his *voir dire*. In the first place I will ask you Mr. Marshall what country you are of? That question was asked Mr. De Fiennes.

Mr. M. Of the United States.

Mr. R. Are you an arbitrator in this case?

Mr. M. I am.

Mr. R. Have you any interest in the result of the arbitration now pending?

Mr. M. Not that I am aware of.

Mr. R. Are you a creditor of Ladd & Co.?

Mr. M. I am not on my own account, but I represent claims against them.

Mr. R. To what amount?

Mr. M. About \$29,000.

Mr. R. Do you get a per centage?

Mr. M. I probably do.

Mr. R. Would you get paid if the arbitration did not result in an award in favor of Ladd & Co.?



Mr. M. Probably not.

Mr. R. Have you any demands of your own?

Mr. M. None.

Mr. R. As to the firm of which you are a member?

Mr. M. None in which they are interested only such as they represent.

Mr. R. I then object to Mr. Marshall as having a resulting interest. He represents claims amounting to \$29,000 which he states to be unsecured, and out of which he also states he expects to receive a commission, and that he could not get it excepting this arbitration terminates in an award in favor of Ladd & Co. Now I do not doubt that Mr. Marshall would tell the truth, the whole truth, and nothing but the truth, and that his award would not be less conscientious because of any pecuniary interest of his own. That is the reason I did not object to him as an arbitrator.

Mr. M. It seems I misunderstood your question. I stated that the debts which I represent would not be paid unless there were an award given in favor of Ladd & Co., and that if they were not paid I should get no commission.

Mr. R. What amount of commission would you receive from those debts?

Mr. M. That I cannot say.

Mr. R. What would you charge?

Mr. M. That would depend a good deal on the circumstances of the parties. I do not know what the law is, for I never before had any claims of that kind to collect.

Mr. R. Would you charge less than five per cent.?

Mr. M. Probably.

Mr. Ten Eyck. Does your commission on the collection of those amounts depend upon this arbitration? Do you look upon the result of this arbitration as deciding whether you will receive or not any money from those debts?

Mr. M. I have answered that before. If they are not paid I shall get no commission, and shall have rendered no services to entitle me to a commission.

Mr. T. E. Have you any pecuniary interest?

Mr. M. None except that way.

Mr. T. E. And it depends upon whether the arbitration goes for Ladd & Co.?

Mr. M. If they receive nothing from this arbitration I know of no means which they have to pay their debts, and if their debts are not paid I shall have performed no service to entitle me to a commission.

Mr. Williams. Under the circumstances in which Mr. Marshall has been placed as arbitrator by the consent of both parties, fully knowing his situation, I see no objection to his testimony being taken.

Mr. Ricord. Notwithstanding his interest?

Mr. Ten Eyck. I do not understand Mr. Marshall to say that he has got any interest.

Mr. R. I take exception to that decision as being contrary to a former decision of the board of arbitrators.

Mr. Brinsmade. Have you ever been in the service of the Hawaiian Government?

Mr. Marshall. I have.

Mr. B. At what date did you enter that service?—at what time, or about what time?

Mr. M. I received a commission to proceed to Europe to represent the Hawaiian Government about the 12th March, 1843. I had before that time been engaged in writing in the Government office for Dr. Judd.

Mr. B. Were you engaged to write in the Treasury office?

Mr. M. I was engaged by Dr. Judd to write for him I should think about the first of January, 1843.

Mr. B. Was your employment in the Treasury office solely connected with the financial board?

Mr. M. It had no particular connection with that business. I was employed to assist Dr. Judd as clerk in whatever writing he had for me. He had a good deal.

Mr. B. You were not particularly limited to the business of the Treasury board?

Mr. M. I had nothing to do with the money department.

Mr. B. What were the duties devolved upon you?

Mr. M. To write for Dr. Judd whatever he gave me to write. Copying documents was my principal employment.

Mr. B. Had they respect to every department of the administration of the Government?

Mr. M. I cannot say now what particular papers I copied, or what particular subject I wrote upon, but they were principally connected with Mr. Richards' mission, either papers for him or copies to be retained of letters for him.

Mr. Ten Eyck. You mean Mr. Richards' mission to Europe?

Mr. M. Yes.

Mr. Brinsmade. By whom were you employed? Who arranged with you?

Mr. M. Dr. Judd.

Mr. B. Did you have any interview with the King, or any agreement with the King or chiefs, or receive any direct instructions from them during that period of your employment?

Mr. M. I did not, that I recollect, have any communication with the King at all.

Mr. B. Did you consider your instructions from Dr. Judd as being authoritative from the Government or given on the Government responsibility?

Mr. M. Do you mean while I was in his employ as clerk?

Mr. B. Yes.

Mr. M. I do not know that that entered my mind. I was employed by Dr. Judd and did what I was told to do by him and he paid me. I knew that I was employed on Government business and matters connected with the Government.

Mr. B. In what manner was business done through Dr. Judd's agency at that time?

Mr. M. I do not know that I understand the question.

Mr. B. The question is, whether you regarded Dr. Judd as general agent of Government in the management of all its interests and affairs.

Mr. M. I did.

Mr. B. With whom were your arrangements made for your mission to Europe?

Mr. M. They were made with Dr. Judd.

Mr. B. At the time of those arrangements was the King in Honolulu?

Mr. M. He was not—he was at Maui.

Mr. Ten Eyck. It would be well here to settle the point as to the distance between here and Maui. Will you state Mr. Marshall?

Mr. M. It is somewhere between 70 and 100 miles.

Mr. T. E. How long does it take to send and receive intelligence?

Mr. M. It generally takes two and a half days to reach Maui from here, and twelve hours to come down.

Mr. T. E. About three days altogether?

Mr. M. With the trade wind between two and three days.

Mr. Brinsmade. Were both yourself and Dr. Judd residing here at the same time when the arrangements were made about your mission?

Mr. M. We were.

Mr. B. And the King was at Maui?

Mr. M. He was at Maui.

Mr. Ten Eyck. Was that his place of residence?

Mr. M. That was his place of residence.

Mr. B. Did you consider your arrangements for that mission as completed with Dr. Judd before you had any communication with the King upon that subject?

Mr. M. I did.

Mr. B. Will you be good enough to state what powers were entrusted to you in that arrangement?

Mr. M. I had a letter of credence as Envoy Extraordinary and Minister Plenipotentiary.

Mr. B. To the Court of St. James?

Mr. M. Yes.

Mr. B. To any other power but the British Government?

Mr. M. I had some, and that was left in some measure discretionary with Mr. Richards, but I do not recollect exactly. My instructions were to report myself to Mr. Richards and act in concert with him.

Mr. B. Who drew up your letter of credence?

Mr. M. Dr. Judd, I think. I received it from him, but I do not know who drew it up.

Mr. B. Was it in the English or Hawaiian language?

Mr. M. Both.

Mr. B. Who framed your letter of instructions?

Mr. M. Dr. Judd.

Mr. B. Who provided for the expenses of your mission?

Mr. M. Dr. Judd made an agreement with Mr. Brewer for the funds. Mr. Brewer furnished them on the King's credit.

Mr. B. In what form and under what circumstances was the King made acquainted with the arrangements made between you and Dr. Judd before your departure.

Mr. M. The Islands were under the English flag, and the King was at Lahaina while the arrangements were concluded. It was important that the matter should be kept as secret as possible, and it was not generally known that I was about to leave. The King had not arrived until the morning when the vessel was about to sail, and there was some doubt whether he would arrive in time, in which case Dr. Judd stated his intention to provide another vessel, as the vessel in which I was to sail was under Lord Paulet's direction. The King arrived the morning of my departure, and the documents were signed by him at Waikiki. I think he had not arrived in Honolulu when I left.

Mr. B. How long after his arrival in Waikiki before those documents were placed in your hands?

Mr. M. I could not say, for I do not know the moment of his arrival—it must have been very soon.

Mr. B. Were you present when they were signed?

Mr. M. I was not. It was not known generally in town when I left for Mazatlan that the King was on the island.

Mr. B. Do you know whether copies of your commission and letter of instructions had ever been submitted to the King before his arrival here from Maui?

Mr. M. I do not know that they had been.

Mr. B. What is your belief?

Mr. M. I think they had not, though it is very possible that the King may have assented to the arrangement. I do not think he had seen the letter of credence which I had.

Mr. B. Do you know of any communication with him before the completion of your arrangements?

Mr. M. I do not. He had been at Lahaina for many weeks. He

was present at the seizure of the islands and left for Lahaina, and returned just in time to sign my papers before I left.

Mr. B. From whom did you receive all your views and instructions in regard to the objects of your mission?

Mr. M. From Dr. Judd.

Mr. B. Did you suppose you were receiving the views and instructions of the Government?

Mr. M. I did.

Mr. Ten Eyck. Do you know when the King arrived at Waikiki?

Mr. M. He arrived in the morning, as I said before.

Mr. T. E. Do you know how long it was from the time of his arrival that you received your instructions?

Mr. M. I do not. I cannot say whether it was one hour or six.

Mr. T. E. How long was it from the time that your letters of instructions were made out before the King's arrival?

Mr. M. I think it was the night before the King arrived that the letter was made out.

Mr. T. E. Did you draw it up or Dr. Judd?

Mr. M. The letter of credence was drawn up by a clerk, and the letter of instructions I wrote myself at Dr. Judd's dictation.

Mr. T. E. At that time was there any other officer connected with the Government.

Mr. M. There were many officers?

Mr. T. E. I mean foreigners.

Mr. M. I believe not. Yes, Mr. Thompson was sheriff. I believe there were no other foreign officers.

Mr. T. E. Were there any of what are now called the different ministers?

Mr. M. I believe not—I never heard of any at that time.

Mr. T. E. What was Dr. Judd's official appointment at that time?

Mr. M. I do not know what was the precise office which he held. He had one as recorder and interpreter, and he was in some way connected with the treasury board. I do not know that he held any other office.

Mr. T. E. You were in the office constantly. Now, foreigners transacting business with this Government, who did they apply to for the views of the Government?

Mr. M. Generally to Dr. Judd.

Mr. T. E. Was it not an universal custom?

Mr. M. Yes.

Mr. T. E. Was he considered at that time the general agent of the Government in conducting business with foreigners?

Mr. M. He was.

Mr. T. E. And how long subsequently? On your return was he still acting in the same way?

Mr. M. Yes. He had received another appointment—he was then Secretary of State.

Mr. T. E. Were his duties partially restricted from what they were when you left?

Mr. M. They did not appear to be.

Mr. T. E. He seemed to be the general business agent?

Mr. M. Yes.

Mr. T. E. Is it so yet?

Mr. M. I cannot tell. I should think he has more influence with the chiefs than any other officer.

Mr. T. E. As the general business agent, should you to this day apply to Dr. Judd if you wanted to transact any commercial business with the Government?

Mr. M. I think I should be likely to do so at first.

Mr. Brinsmade. How soon after your arrival in England were you put in communication with Mr. Richards?

Mr. M. About a fortnight. That is to say, I wrote to him immediately on my arrival in London, but the letter miscarried and he did not receive it for a fortnight. [Mr. R. was in Paris.]

Mr. B. Previous to his arrival had you entered upon the duties of your mission?

Mr. M. I had.

Mr. B. Were you received by the British Cabinet on terms of at least an equal footing with those on which Mr. Richards had been received.

Mr. M. I was. They stated that they received me in the same manner as they had received Sir George Simpson and Mr. Richards, but they could not receive me as a minister.

Mr. B. On what terms did yourself and the other commissioners receive and communicate with me? On terms of intimacy and confidence?

Mr. M. Yes, perfectly so. Mr. Richards seemed to confide in you entirely, and there seemed to be perfect confidence in regard to the progress of the mission between you and him.

Mr. B. In what manner or terms were he and yourself accustomed to speak of the result of the second letter, or in what terms were you and he in the habit of speaking of my connection with that letter?

Mr. M. I cannot remember any particular expressions, he said it was a very important letter, and that as having drawn it up, you were entitled to a great deal of credit due for its effect.

Mr. B. Did you learn from Mr. Richards any thing of the negotiations to which he had been a party with me in Belgium.

Mr. M. I did. He informed me I believe fully, of the Belgian Contract on my first arrival, or rather, on his arrival in London.

Mr. B. Did he show you the terms of the contract?

Mr. M. He did.

Mr. B. Did he convey to your mind the idea that he had implicated the responsibility of the Government in that contract?

Mr. M. I considered it so, though no question arose regarding that point, he spoke of it as a thing in which the Government was involved.

Mr. B. Did he speak of it as a negotiation which he considered advantageous to the Government?

Mr. M. He did, I had some considerable argument with him about that contract.

Mr. B. Did he defend the contract?

Mr. M. He did.

Mr. B. Did he make any propositions to you to take part in the administration of the community here?

Mr. M. He did. The copy of the contract was not received from Brussels, till the day before my return to the U. States. I looked it through hurriedly. I recollect his calling you to witness that he had offered me some appointment, I believe to be one of the committee of directors, which I had accepted conditionally.

Mr. B. On what condition?

Mr. M. That it should not interfere with any arrangements I had made with Mr. Brewer.

Mr. B. Do you remember the circumstances under which the contract of 1841 was called to your notice by Mr. Addington, the under Secretary of Foreign Affairs?

Mr. M. I do.

Mr. B. Will you state them?

Mr. M. He spoke of it as having just heard of it. He said he had heard that the King of the Sandwich Islands had engaged to give up all his lands and indeed the sovereignty of his Islands, to an American, and he said that if it was so, he was not fit to rule, and it was a strong reason why the British Government should not secure his independence. At that time I had not seen the document, but I told him I would pledge myself, the statement was not true, and I called on Mr. Richards and copied the contract, and sent it to Mr. Addington, and the next day called on him again.

Mr. B. Previous to that, was Mr. Addington solicited by you to receive yourself and me in confidence on the subject?

Mr. M. He was. It was subsequent to my interview, that I sent him the copy in order as he said, that other minds, as well as his own, might be satisfied.

Mr. B. In that interview which Mr. Addington gave to yourself and me, upon the subject, what explanations were made to him of the objects contemplated in that contract, or were the explanations made such as were perfectly satisfactory to him?

Mr. M. They were; you explained, the object of the contract,

and the dispositions which had been made of it, and he appeared to be perfectly satisfied.

Mr. B. Do you recollect his speaking of it as having been an advantageous negotiation for this Government?

Mr. M. My impression is that he did. I do not recollect the precise terms upon which he expressed himself. I know we made use of it as an argument, to hasten the decision of England upon the questions submitted to them, in connection with the Government, because this matter was prevented from being carried into effect by the delay on the part of Great Britain, in deciding those questions.

Mr. B. Was that argument repeatedly used, both in written communications and in your personal interviews?

Mr. M. It was.

Mr. B. Will you repeat the argument?

Mr. M. That the operations based upon that contract, or the completion of them were delayed by waiting for England to decide upon the questions which led to the seizure of the Island by Lord George Paulet.

Mr. B. Do you know in what terms Mr. Richards in his communications with this Government, spoke of my co-operation with him in Europe, in a communication made by yourself and Mr. Richards, or in such as he read to you?

Mr. M. I do not recollect seeing any thing of his letters to this Government.

Mr. B. Did he say any thing to you of the obligation of the Government to me for services that I had rendered?

Mr. M. He did.

Mr. B. Did he speak to you of the accommodations which he had afforded me?

Mr. M. He did; that occasioned the remark he made.

Mr. Ten Eyck. What was the remark?

Mr. Marshall. It was in answer to a suggestion of mine, that there was some doubt whether the house would be able to meet its engagements. He made a remark to this purport, that the services which Mr. Brinsmade had done him for the Hawaiian Government, would more than cancel the amount advanced, even if the house were not able to pay it. He expressed himself under obligations to him for his services.

Mr. B. On your return here, did you put yourself into immediate communication again with Dr Judd?

Mr. M. I did.

Mr. B. Did you inform him of the negotiations in which Mr. Richards had committed the Government in the Belgian Contract?

Mr. M. I did, so far as I knew I gave him the whole history of it.

Mr. B. How did he view those engagements?

Mr. M. He appeared to me to be dissatisfied and to feel anxious.



. B. Did he seem to acknowledge the obligation of the Government in the contract?

. M. That subject was not alluded to as I know of, there seemed to be no question of it, he did not speak as if there was any about the matter.

. B. Did he seem to you, to regard it as being of as much as Mr. Richards did?

. M. So far as I could judge from the conversation I had with him.

. B. Did he speak of having communicated with Mr. Richards in regard to the contract, or to any points in it?

. M. I cannot state, I cannot recollect any thing about that.

. Ten Eyck. By the way, I would ask, there were a lot of communications passed between Mr. Richards and Dr. Judd, that were to be sent to the Government, there was a pledge a long time ago, that they should be sent.

. Ricord. There was no pledge to file them at any particular time, I will introduce them when necessary, as rebutting evidence.

. Brinsmade. On meeting Dr. Judd on your return, did you see him in the same place and power in Government as when you went away, and did he speak to you of the Government matters as he had been previously accustomed to do?

. Marshall. He did, he seemed to have the same position as I went away.

. B. Did he speak to you of any acts of his, as acts of Government?

. M. He spoke as he had always done of the measures which had been taken.

. B. Will you state any particular acts or measures which he spoke of to you, as having been entered upon by him?

. M. I do not recollect any now, except he spoke of the statement of Mr. Ricord.

. Mr. Williams. What time did you return?

. Marshall. I returned in April, 1844.

. Brinsmade. You regard it as a measure originating and conducted by Dr. Judd?

. M. He stated it as such to me.

. B. In your subsequent intercourse with him for a considerable period, have you received the declarations and acts of Dr. Judd in relation to the acts and declarations of Government?

. M. I have, always.

. B. And so far as you know, have they been acknowledged and tacitly assented to on the part of the Government?

. M. So far as I know, I know of no objections that have been made.

. B. How far did you consider the approbation expressed

the legislature after the return of Mr. Richards, to aver the acts of yourself and Mr. Richards, in your mission?

Mr. Ricord. I would object to that question, as asking Mr. Marshall for his opinion.

Mr. Brinsmade. We are asking for the facts.

Mr. Ricord. I wish the facts to come from the instrument, it is an instrument capable of self-construction.

Mr. Ten Eyck. I will say one word in reply and ask the court to look to the examination of Mr. Richards, and how that was conducted.

Mr. Ricord. Cross-examination is as distinct from examining in chief, as possible. The cross-examiner has a vast latitude allowed to him.

Mr. Brinsmade. I do not ask his opinion or impression. Mr. Marshall had been in the service of the Government, and had served them faithfully, and this act of the legislature was intended as a sort of remuneration. I want to ask him whether he considered it a remuneration, and whether he considered it as a gratification to him. Those measures of the legislature were intended as a remunerating tribute;—did you consider them as covering your acts and the acts of the mission?

Mr. Marshall. I did, so far as it went; it was a very indefinite resolution, I thought.

Mr. Brinsmade. In this particular measure, which Dr. Judd reported to have been entered upon by himself, the appointment of Mr. Ricord, what reason did he assign for it?

Mr. Marshall. He assigned several, I do not recollect them all.

Mr. Ricord. I would like again to object; I understood that they were to attempt to prove their point by the acts of Dr. Judd; but with the evidence of those acts, are interwoven, now the declarations, the evidence of which has been overruled.

Mr. Brinsmade. I want to get at a Government measure instituted by Dr. Judd, and to show how far he was not acting for the present passing interests, but with a view of the prospective interests of the country, and how far he felt himself authorized to act. I want to show the authority of the person acting for the Government.

Mr. Williams. How far it would impress the public with his authority.

Mr. Brinsmade. What reason did he assign to you for the appointment of Mr. Ricord?

Mr. Marshall. One reason was, that his own duties were so arduous, that he needed assistance, especially at the present juncture, when he was engaged in controversy with General Miller, regarding Mr. Charlton's land. Another reason was that Mr. Ricord was here, and he was fearful that he would be employed against him. These are the reasons which he assigned that I remember.

. Ten Eyck. Did I understand you to say that when you were on the ship, you saw the copy of the Belgian Contract that Mr. Brinsmade had?

. Marshall. I did see something that purported to be

. Ten Eyck. What did you understand by that, that the contract had been sold by Ladd & Co.?

. Marshall. The contract states that itself, as I said before. Brinsmade or Mr. Richards sent for a copy for me to see. It was the day before I left, I read it hurriedly and knew little about it before I got to the United States.

. Ten Eyck. Before seeing it had you not conversed about it, or what was your understanding with regard to what Ladd & Co. had done by that contract?

. M. I understood that they had sold all their leases and property at Koloa, with their store and warehouses here, their wharfage dues and the contract of 1841.

. Ten Eyck. Did you tell Dr. Judd about these things when he returned here?

. M. I presume I did.

. T. Have you any doubts but that you did?

. M. I stated all I knew about it.

. T. And that you did know before you left England?

. M. Yes.

. T. E. When did you return here?

. M. In April, 1844.

. T. E. While you were in Europe did you have the reading of letters received from Dr. Judd by Mr. Richards?

. M. I read all that he received while I was there, they were few, I believe there was only one dispatch received.

. T. E. Was any thing said in that in regard to the Belgian contract?

. M. No, it was a short dispatch written in great haste.

. T. E. About the restoration perhaps?

. M. No, I received news of that another time.

. T. E. Did Mr. Richards and Haalilio appear to understand what had been done in Belgium?

. M. They did, Mr. Richards seemed to understand it fully, but Haalilio I had very little conversation with.

. Brinsmade. Did he seem to think it would be a plan that would be advantageous to the Islands?

. Marshall. He did, he debated the point at some length, as I remember some objection to it.

. Ten Eyck. What time did you leave here, the day you left the ship?

. Marshall. It was towards evening when we got away.

Mr. T. E. I understood you were not present when the King signed your letter?

Mr. M. I was not, I was busy with my arrangements to go.

Mr. T. E. Were you here at the session of the Islands?

Mr. M. I was.

Mr. T. E. Were you one of the committee of citizens that waited upon the King, or do you recollect about a committee of citizens waiting upon the King?

Mr. M. I do not, excepting that the citizens went as a body, to meet him, when he was sent for by Lord George Paulet, and called upon him at his Palace when he arrived in Honolulu; but there was no formal deputation.

Mr. T. E. You do not recollect about a committee waiting upon him with regard to that cession?

Mr. M. No, I do not.

Mr. T. E. Do you know whether Mr. Richards received any instructions from Dr. Judd respecting the contract of 1841, with regard to the sale of that contract or the disposition which might be made of it?

Mr. M. I do not, but I remember his allusion to the subject.

Mr. T. E. Did Dr. Judd speak to you of it?

Mr. M. No, I was not aware of the existence of it till I heard of it from Mr. Addington in London. Mr. Richards said it was an oversight of his in not having shown me that contract when I first arrived in London.

Mr. T. E. I have no more questions.

Mr. Ricord. This examination of Mr. Marshall this morning, was rather unforeseen to me, and therefore, I am afraid my cross-examination will be desultory, and not so full as I could wish.

*Cross-examination by Mr. Ricord.*

Mr. Ricord. Did you ever know, at the time you were employed by Dr. Judd, whether he took the orders of the King or did not take them, for what he assigned to you to do?

Mr. Marshall. I do not know.

Mr. Ricord. What capacity were you in?

Mr. M. Merely as clerk.

Mr. Ricord. Would you be likely, in that capacity, to know?

Mr. M. I do not think I should, I was merely temporarily engaged to copy certain documents, principally records of the courts, which he wanted to send to Mr. Richards to explain certain questions.

Mr. Ricord. You say you do not think you should?

Mr. M. I do not think I should, my business was principally to copy these papers.

Mr. R. Was Dr. Judd in communication with the King?

- . M. I presume he was.
- . R. I mean while he was at Maui?
- . M. I presume he was, but I do not know.
- . R. What was the general character of the orders Dr. Judd you?
- . M. He gave me a parcel of papers to copy, which I did.
- . R. Did you consider that a responsible act?
- . M. I consider I was bound to him to do it, I was paid for it.
- . R. Did you consider that a responsible act?
- . M. I do not know that the question entered my mind.
- . R. Who signed your commission and letter of instruction, you went to Europe?
- . M. The King and Premier.
- . R. Did any body attest or countersign them?
- . M. I do not recollect, I am under the impression they were countersigned by Dr. Judd and a native; I can very easily ascertain.
- . R. I wish you would file them that we may see what Dr. Judd's agency was in the matter.
- . Ten Eyck. (To witness.) I hope you will submit them to the court.
- . Ricord. Was there a Premier at that date?
- . Marshall. There was Kekauluohi.
- . R. In what character did you consider her?
- . M. As Premier.
- . R. Did you draw any distinction between the Premier and Dr. Judd?
- . M. I did not draw any distinctions, I considered her as Premier and Kamehameha as King, and I knew that they had very nearly the same powers.
- . R. Did you suppose any officer could be put in such a position as to supersede the Premier?
- . M. I do not know enough of the constitution to know whether that could be or not; I do not know whether the King could do so without her consent.
- . R. Would not you consider the foreigners employed in the government at that time, as mere clerks?
- . M. I regarded myself so.
- . R. Would you not consider them as clerks, interpreters, reporters &c.?
- . M. I certainly did not consider Dr. Judd as clerk; I did not consider him as Premier or King, but I considered him nearer the Premier or King than a clerk.
- . R. Was Dr. Judd considered at that time, the general agent of Government, or simply as the person who communicated with the King as interpreter for foreigners?

Mr. M. As far as my impression goes, as a general agent of Government.

Mr. R. To act without consultation?

Mr. M. Yes, in most things.

Mr. R. Who so considered him?

Mr. M. I considered him so, and I believe it was the general understanding, that if Dr. Judd consented to a measure, the King's consent would not be wanting.

Mr. R. Whose act do you consider it would then be?

Mr. M. It would be difficult to say whose.

Mr. R. Do you know of any deeds or acts, which lacked the King's signature?

Mr. M. I do not, I was not connected with the financial department, and I do not know what laws were made.

Mr. R. Do you know any acts without the King's signature?

Mr. M. I know that the acts of the commission were all signed by the King, and my letter of credence and instruction, were signed by him.

Mr. R. You state that Mr. Richards spoke to you about the Belgian Contract, after his return from Paris. Did he leave the impression on your mind that he had bound the King and Government in Belgium without the necessity of after ratification by the King?

Mr. M. He did give that impression.

Mr. R. Was nothing said at all about ratification?

Mr. M. Nothing at all, I never heard the word mentioned as applied to the Belgian Contract, until since my return here.

Mr. R. Did he speak of the Belgian Contract being postponed till an agent should be sent out here, and that the Belgian Company meant to send one out.

Mr. M. He did not. He spoke of no necessity, except the guarantee of England and France, which had not been obtained when I left England.

Mr. R. Is the Belgian Contract so called a written instrument?

Mr. M. It is.

Mr. R. Do you know whether the terms of that contract were ever fulfilled by the Belgian Company,—whether they have ever fulfilled their part of it?

Mr. M. I do not know any thing about it except that no vessels have come out.

Mr. R. Do you know whether they have ever fulfilled any conditions of the contract?

Mr. M. I presume they have not.

Mr. R. Do you know those conditions?

Mr. M. The contract speaks for itself. There was something said with regard to a community.

Mr. R. Do you know who was to form that community?

Ten Eyck. I insist that Mr. Marshall take the contract in hand if he is to be questioned about it.

Ricord. Do you know whether the fulfillment of that contract has ever demanded of this Government?

M. I do not.

R. Do you know whether Ladd & Co. have any right to demand its fulfillment?

M. I do not.

R. You stated that they had conveyed all their real property by name and kind, to the Belgian Company?

M. Yes.

R. What property?

M. I stated that it was their property at Kauai, their leases, their store here, their wharfage and the contract of 1841.

R. That is to say, all their properties here?

M. I do not know whether it included Mr. Ladd's house—the property of the company, I believe was included.

R. Who are the creditors of Ladd & Co., that you repre-

M. One is Mr. Nason, another the firm of Dole & Stickney.

Ten Eyck. I insist that this shall not be put down. I object to any questions in regard to Ladd & Co., these are questions we have not entered into, and which have no relevancy to this case. The only object the gentleman can have is to make the story as it is called, more extended than it need be, or else to cast a slur upon Ladd & Co.

Ricord. I have neither of those objects in view, I merely want to know the creditors represented by Mr. Marshall, that I may get the amount of per centage that would come to him.

Mr. Williams. You have got that already.

Ricord. But I may get it twice, I do not know that I am to be troubled in examining the witness, because something unpleasant may come out.

Williams. Is there any legal objection?

Ten Eyck. He may not question Mr. Marshall on any subject which I have not called his attention.

Ricord. That is not the case, I have the widest latitude allowed in cross-examining, and it has been decided, that in cross-examining, I may, if I can, prove the witness to be interested.

Ten Eyck. I object. Did I not satisfy the arbitrators, that in the voir dire examination, he might not object to the witness on the ground of interest?

Williams. No, I understood you to say that proof of the witness's interest might come in in the course of the cross-examination.

Ten Eyck. I could not have so said, you must have misunderstood me; but I do not believe the gentleman. The tender

of these questions will be either to make the case more expensive or else to throw a slur upon Ladd & Co.

Mr. R. I have not yet accused the gentleman of lying, but I might recriminate in connection with matters lately passed between us.

Mr. Ten Eyck. What am I to understand by that?

Mr. R. I say that you have made me a pledge which you have not fulfilled.

Mr. Williams. I do not think this a proper course to promote the object of the arbitration.

Mr. T. E. Nor do I; but I wish the world to know the facts with regard] to this attack upon my honor.

Mr. R. Then I wish it to be understood —

Mr. Williams. We both positively object to this.

Mr. T. E. There is nothing that I have an objection to be made known.

Mr. R. I simply made the remark, not wishing to say more; but if the gentleman wishes it I will state the matter. After the last debate we had here, Mr. Ten Eyck came to me when I did not expect him, and wished to know whether something could not be done to put an end to this arbitration. I told him I thought there might, and requested him to go home and write out his proposition. He did so, and I have his letters. We finally had some conversation, and something was said about Government assuming Ladd & Co.'s responsibilities, and consenting to pay a certain per centage on their claims in the course of a given time, and Mr. Ten Eyck said that if they did not accede to it he would withdraw from the arbitration altogether. He did not withdraw, and a negotiation afterwards went on with Mr. Williams, and a better proposition was made which was partly agreed to by Mr. Brinsmade, and a meeting was had; and although it did not terminate in the rupture of the compact, Mr. Ten Eyck did not leave the arbitration.

Mr. T. E. Do I understand you to say that some proposition has been made by you which I have not agreed to?

Mr. R. You said that if the Government were willing to accede to a fair proposition made by you or any body else, to which Ladd & Co. would not agree, you would withdraw. There is the gentleman who made the proposition.

Mr. T. E. Have you shown that you, or any one else, has made any proposition which I could regard as *fair* and honorable? or that the Government have acceded to the proposition I made them?

Mr. R. I do not know that you consider any thing fair.

Mr. T. E. Nothing that you do, certainly.

Mr. R. I made a pledge in connection with that subject, that I would withdraw under certain circumstances, and had those circumstances offered, so help me God I would have withdrawn. (To witness.) I want to know the names of the creditors you represent.



r. T. E. I insist that my legal position is a correct one. I admit whether in the opening of this day's proceedings Mr. Ricord did not say that he could not doubt but that Mr. Marshall could not be influenced as to the testimony he would give.

r. Williams. Very true. I should object to any other evidence in regard to Mr. Marshall's bias, excepting such as may come from him. The object is that he may show a bias.

r. R. Which will go to the favor, as the law says, or as you would say, to his disfavor?

r. Williams. Mr. Marshall has stated that he represents claims for an amount of \$29,000.

r. T. E. Mr. Ricord can get no further proof out of him than will come out.

r. R. My object is to show bias and interest.

r. Marshall. The only object after my examination on *voir dire* was to introduce me to contradict myself.

r. R. Any thing of that sort will go to the favor.

r. M. I shall object to answer any such questions.

r. Williams. Do you say so as an arbitrator or as a witness?

r. M. As witness.

r. R. I do not know all the creditors of Ladd & Co., and I do not know those that Mr. Marshall represents. Do you represent the largest amount of unsecured claims?

r. M. I do.

r. R. Have you had a meeting with any of the creditors of Ladd & Co. lately?

r. T. E. I object to the question.

r. R. It is said that there was a meeting of creditors, when it was determined that they should provide funds to carry through this

r. M. I have been at a meeting of the creditors. There was a meeting last Saturday.

r. R. Was there any arrangement entered into at that meeting in regard to drawing upon the creditors for the expenses of this action?

r. M. There was none.

r. R. Was the subject entered upon?

r. M. I suggested it. I suggested that the arbitration was likely to be expensive, and that as an arbitrator I should not consent to carry it on unless we had funds, and as Ladd & Co. had not the funds, that the creditors should make some proposition, which they declined to do at that time.

r. R. Do you know whether they made any arrangement at any other time?

r. M. I am quite aware they have not. Some one remarked it would be time enough when they were asked.

Mr. R. Have you made any arrangement with Messrs. Ladd, Brinsmade and Hooper, or any body else?

Mr. M. I have not—excepting on the 13th of July.\*

Mr. R. You spoke of the acts of Dr. Judd as being the acts of the King. What acts? Can you enumerate any of them—any particular doings of his that were acts of the King's?

Mr. M. I do not know that I could specify any particular one.

Mr. R. Was that the general impression on your mind?

Mr. M. Yes.

Mr. R. Do you know who appointed me to the office I hold?

Mr. M. I believe your appointment is signed by the King and Premier?

Mr. R. Do you know the circumstances under which I was appointed?

Mr. M. I know them as stated by Dr. Judd. I have already stated them.

Mr. R. You stated the case, but I ask for the circumstances under which I was appointed. When it was? how it was?

Mr. M. I do not recollect the particular circumstances any more than I have stated. Dr. Judd told me he was afraid you might be employed against him, and that he considered you a fiery and head-strong fellow, and that so long as he could manage you, you would be of service.

Mr. R. Do you know if the King was here at that time?

Mr. M. I do not.

Mr. R. Do you know in whose presence I was sworn?

Mr. M. I do not. I believe you were sworn about a week before I arrived.

Mr. R. Do you know whether I was bargained with by the King and chiefs in person?

Mr. M. I do not.

Mr. R. Did you ever hear that I was?

Mr. M. I did not. Dr. Judd spoke of it as a plan of his own?

Mr. R. Going back to the seizure of the islands, under what circumstances did the seizure of the islands take place?

Mr. M. On account of some heavy claims presented by Lord George Paulet which the King could not meet; a claim amounting to something like \$80,000, for alleged damages due to British subjects.

Mr. R. Was there any ship of war here at the time?

Mr. M. Yes; the Carysfort, and the U. S. ship Boston.

Mr. R. Was this a categorical and peremptory demand?

Mr. M. It was.

Mr. R. Under what threat?

Mr. M. Under the threat of bombarding the town, I believe.

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\* Date of the compact of submission.

Mr. R. Did you consider it as imperative on the King at that time?

Mr. M. I did. Every preparation was made on board the Carysfort for bombarding the town.

Mr. R. Did the King manifest any uneasiness?

Mr. Ten Eyck. I object to this: it increases the expense, and there is no necessity for it.

Mr. Williams. What is the motive of the question?

Mr. R. To show compulsion.

Mr. M. One suggestion I have to make: that the debating this point is quite as expensive as my answering the questions.

Mr. R. I understood you to say that it was imperative on the King to do something. What could he do? Either pay or have his lands seized? Was it an alternative with him to decide on one or the other of those misfortunes?

Mr. M. He was to pay or do something else.

Mr. R. Were you consulted by the King, or any body on his behalf, with regard to the propriety of making the cession?

Mr. M. I don't think I was. I was a mere clerk.

Mr. R. Do you know whether the King was anxious to make the cession?

Mr. M. I think he was not.

Mr. R. Do you know whether either Mr. Ladd or Mr. Hooper was consulted with regard to that measure?

Mr. M. I should presume they were. They were on very good terms at that time with Dr. Judd.

Mr. R. Was there a general consultation with persons in town?

Mr. M. There was. I said a general consultation: there was one with Capt. Long, but I do not know how far the residents had to do with it.

Mr. R. I have no more questions.

Court adjourned till the evening of the same day at 7 o'clock.

#### SIXTEENTH DAY—*Continued.*

The court sat again at 7 o'clock, P. M.

Mr. Ten Eyck. It may seem proper before we commence this evening, that I should say something with regard to the charge made against me by Mr. Ricord this morning. The charge, as stated, is this: that I had pledged myself to him in case any proposition was made by him or any other person for a settlement with Ladd & Co. which I considered fair, and if Ladd & Co. did not accede to it I would withdraw. So far as the pledge is concerned it is true, but when it is insinuated that any proposition has been made which I consider fair, and which they rejected, then it is not true. I am not acting on contrary to my pledge, because no proposition has been made which I considered fair. With regard to this matter I consider that

any notes or observations which past between Mr. Ricord and myself were strictly confidential and not to be brought forward, and to show that my understanding in the matter was correct, I will read from a note received by me from Mr. Ricord himself, because I consider my character at stake. I read this now to show whether I have violated a pledge, or whether the gentleman has. In regard to propositions which Mr. Ricord seemed anxious I should tender to him he wrote:

"Will you oblige me with such tenders" (of compromise) "on their" (Ladd & Co.'s) "part, in the strict understanding that should no compromise be effected, they, the replies to them, and all conversations and correspondence between us touching this matter, shall remain strictly private and confidential, neither to be known, spoken of, or mooted in evidence by either party."

Now in reply to that note I said, so I regard it and I will sacredly live up to that understanding.

Mr. R. I will now make part of these proceedings all the notes, to show the connexion of what has been read. Mr. Ten Eyck in a cavalier, and what I considered an ungentlemanly manner, threw out a hint that I had falsified myself, to which I replied that he himself had laid himself open to the charge by not withdrawing according to his undertaking. As to overtures on the part of Government there have been none. The gentleman came to me with tears in his eyes. I said, let him make his proposition, let him go home and write it. He did so. What he read came from my reply: in his note to me he said nothing about its being confidential.

Mr. T. E. Yes, you were the first to make it so, and then broke through your own promises.

Mr. R. I wish to make those notes a part of the proceedings here, to acquit myself of the charge which the gentleman seems to wish to fling at me.

Mr. T. E. (On the entrance of Mr. Andrews.) One object in having Judge Andrews here was, that there are certain papers concerning which we wish to question him. As the Governor is not here (who had also been expected to give evidence this evening) Mr. Andrews can leave those papers, if he chooses, and so avoid the necessity of coming here a second time.

By the Board. Did you receive a note from us?

Mr. Andrews. No, I did not.

By the Board. We wrote to request you to bring with you the records of the court in the case of the Treasury Board, v. Ladd & Co.; and also to summon the Governor to appear as a witness.

Mr. A. I heard that John Dominis had been with a paper, and been told that I was down at my room, as I was till sundown. I have no papers with me, and until this minute I have been quite ignorant of the object of my being sent for.

Mr. T. E. We will then defer asking him any questions. Th

only questions to be asked are in connexion with papers in his office in regard to an execution against Ladd & Co.

Mr. Frederick Thompson sworn by Mr. Hopkins.

Mr. T. E. Mr. Thompson when did you come to reside upon the Sandwich Islands?

Mr. Thompson. I arrived in February, 1841, about the 26th of the month.

Mr. T. E. Were you ever sheriff of this island? What was your style of office?

Mr. T. Sheriff of this island?

Mr. T. E. How long were you sheriff?

Mr. T. I think about two years—I am not positive.

Mr. T. E. Did you do much business as sheriff?

Mr. T. I did not do so much as I could wish in view of the considerations. I did all there was to be done however.

Mr. T. E. How much did you do?

Mr. T. It would be impossible for me to tell now.

Mr. T. E. Give a rough calculation.

Mr. T. I have lost my chance of guessing.

Mr. T. E. Why?

Mr. T. I have been from Yankee land so long.

Mr. T. E. Did you have six executions?

Mr. T. I think so.

Mr. T. E. Were they a pretty litigious set those days? How much do you suppose your per centage amounted to in those two years?

Mr. T. I suppose about five or six hundred dollars.

Mr. T. E. Were you a man of family at that time?

Mr. T. No.

Mr. T. E. Were you in the habit of executing writs and other processes from the courts of this island for the Governor? In taking your instructions in regard to such proceedings, who did you generally apply to?

Mr. T. I generally went to Dr. Judd, and generally received my instructions from him. I was ignorant of my duty of sheriff, and so consulted Dr. Judd.

Mr. T. E. Why did you consult him?

Mr. T. Because I thought he was capable of giving me instruction. I could not talk the native language, so I was obliged to go to him.

Mr. T. E. When you went to Dr. Judd and got your instructions, did you suppose you were getting such instructions as you thought Government would sustain you in, or did you take them as coming from Dr. Judd individually?

Mr. T. I supposed that the instructions I received from him would be guarantee for me.

Mr. T. E. How was he regarded? as the general business agent of the Government?

Mr. T. I believe he was regarded as the general business agent of the Government.

Mr. T. E. Were you ever in the habit of going to the Governor or any of the native officers here to get instructions?

Mr. T. Occasionally to the Governor.

Mr. T. E. Were you ever referred to the Governor by Dr. Judd?

Mr. T. Yes, I think I have been.

Mr. T. E. So far as the general business of the Government was concerned, in which foreigners were interested, how did you regard Dr. Judd, and how was he regarded by the community here?

Mr. T. As far as I can recollect he was considered a very active man in the service of Government, and one who knew twice as much as any other about Government matters, and I applied to him because I could not understand the Governor not knowing the native language.

Mr. T. E. You can answer for the general understanding of the community.

Mr. T. He was considered a man in authority. I cannot tell what his position was.

Mr. T. E. If Dr. Judd had come and expressed any views with regard to Government, would you have considered them as his views or those of the Government which they meant to carry out?

Mr. T. I should have regarded them as his views, but whether they would be carried out by Government I could not state. My understanding was that Dr. Judd was principal managing man—what his position was I am unable to say. I took his advice in carrying out my duty—what his position was I am unable to state.

Mr. T. E. About an execution or attachment on Charlton's property, did you execute it?

Mr. T. Yes, sir.

Mr. T. E. From whom did you get your instructions?

Mr. T. One letter from the Governor to proceed to Kauai and attend to that duty, and another to the Governess of Kauai requesting her to facilitate my business, and one letter from Dr. Judd to Mr. Whitney, I think.

Mr. T. E. Were your instructions from Dr. Judd?

Mr. T. I applied to him to know what I was to do with the property when it was attached. He gave me his views, and I carried them out as far as I could.

Mr. T. E. In doing so whom did you suppose you were serving?

Mr. T. I thought I was serving the Government, of course. I think I was wrong in stating that I was sheriff two years. I think it was two years and a half or thereabouts.

Mr. T. E. Did you sell the property of Mr. Charlton in this town?

Mr. T. Yes, sir; at least I sold the property where Gen. Miller lives.

Mr. T. E. Did you receive your instructions from Dr. Judd regarding that sale?

Mr. T. If I recollect rightly he handed me the necessary papers. My directions were signed by the Governor, and were in native, and translated into English for my special benefit, probably, as I could not understand native.

Mr. T. E. At that sale of Mr. Charlton's, on the premises where General Miller now resides, was there any tender of money made?

Mr. T. Yes.

Mr. T. E. It was refused by you, was it not?

Mr. Ricord. I do not see that this has any bearing on the case.

Mr. T. E. The question is this. Did Dr. Judd instruct you to go on with the sale after the money was tendered?

Mr. T. I recollect a certain incident connected with that affair —

Mr. T. E. But I want an answer to that question. Did Dr. Judd give you instructions to go on with the sale after the money was tendered?

Mr. T. He did not give me any instructions after the money was tendered.

Mr. T. E. Did he give you any instructions after the money was tendered to go on with the sale?

Mr. T. I recollect that the money was tendered and that the sale went on; and one interesting reminiscence is, that I got more commission that day than any other whilst I was sheriff.

Mr. T. E. Then you cannot say whether Dr. Judd gave you your instructions?

Mr. T. I cannot at the present time.

Mr. T. E. Will you try to recollect between this and next Wednesday?

Mr. T. My memory is very treacherous. I should like the reporter to put down that I cannot remember at this time.

Mr. T. E. Did Dr. Judd give you any instructions?

Mr. T. Yes, he said something about my going on with the sale.

Mr. T. E. Did you apply to him, or did he come to you?

Mr. T. The attachment was laid on the property previous to the arrival of Lord George Paulet, and taken off again afterwards. It was attached again and the property sold.

Mr. T. E. It is whether the Dr. gave you any instructions that I want to know?

Mr. T. I should want to be very positive before I say whether he did or not, I do not want to say any thing that is not entirely correct.

Mr. T. E. Had you any persons to indemnify against your proceedings in that case?

Mr. T. No Sir.

Mr. T. E. Suppose you had got into trouble in that affair, who should you have looked to?

Mr. T. The party interested would have been very unfortunate, he could have got nothing out of me.

Mr. T. E. Therefore, you did not care whether any body were paid or not.

Mr. T. No, I was not very anxious, I did not feel much alarmed for myself.

Mr. T. E. You had some attachment or something against the ship Eagle?

Mr. T. I had something, it was a *habeas corpus* I think.

Mr. T. E. A *habeas corpus* on the ship?

Mr. T. I had a writ of *habeas corpus* to take a body out of a ship, and was fortunate enough to succeed in doing so.

Mr. T. E. Who gave you instructions about the *habeas corpus*?

Mr. T. Why, I received a warrant from the Governor to go on board the Eagle, and take out a native boy supposed to have been smuggled on board, and I went out for the purpose with Mr. Pitt.

Mr. T. E. The question is, whether you got any instructions from Judd?

Mr. Ricord. I will file the papers if the arbitrators please, the application was made by me.

Mr. Ten Eyck. I want to know whether Dr. Judd instructed him?

Mr. Thompson. I do not recollect that he did, I got instructions from Mr. Ricord, I do not know that I received any instructions direct from Dr. Judd.

Mr. T. E. Did you get any censure?

Mr. T. Yes, I believe that I did; I think that I received a small blowing up after the business was over, but then I have no doubt, that as in many other cases, I deserved it.

Mr. T. E. When you took the office of sheriff, who at first made application to you to receive that appointment?

Mr. T. Why, I received a note to go up to Mr. Ladd's house.

Mr. T. E. Did Dr. Judd apply to you to take that office?

Mr. T. I believe that the community were interested to have a sheriff, and they selected me.

Mr. T. E. I want an answer to any question; did Dr. Judd apply to you to receive that office?

Mr. T. He was very glad that I took it; I think it more than likely that Dr. Judd did apply to me to take that office;—my impression is that Mr. Ladd —

Mr. T. E. Do not say any more. Did Dr. Judd come to you or did you go to him?



Mr. T. I did not go to Dr. Judd and Dr. Judd did not come to me.

Mr. T. E. That is a direct answer. Did you go up to Mr. Ladd's, and did Dr. Judd then propose to give you the office?

Mr. T. That is what I was going to tell you when you stopped me. That is a fact, I went to Mr. Ladd's and Dr. Judd went too.

Mr. T. E. There, then Dr. Judd applied to you?

Mr. T. Very probable. It might have been him or somebody else.

By the Board. Please to confine yourself to the question.

Mr. T. E. You were then applied to by Dr. Judd?

Mr. T. I was applied to at Mr. Ladd's, but I do not recollect that it was by Dr. Judd.

Mr. T. E. Were you ever applied to by him, or did you ever have any conversation with him about that?

Mr. T. Not that I remember.

Mr. T. E. How long was it before you got your appointment?

Mr. T. Not long after, it might have been three or four days. I know the date of my commission, it was very shortly after.

Mr. T. E. From whom did you get your commission?

Mr. T. From the Governor, Kekuanaoa.

Mr. T. E. At the time of the sale of the property where General Miller lives, was there any understanding, to your knowledge, between the purchasers and the Government in regard to the sale, or between Dr. Judd and yourself, as sheriffs, and the person that bid it in?

Mr. T. It was bought by Captain Dominis, but what the understanding was, I do not know.

Mr. T. E. Did you understand that it was going to be bid in on behalf of Government?

Mr. T. No.

*Cross-Examined by Mr. Ricord.*

Mr. Ricord. When did you leave the office of sheriff?

Mr. Thompson. I think, the last day of June, 1844.

Mr. R. Do you recollect when I arrived here?

Mr. T. No, I do not recollect the date of your arrival.

Mr. R. Do you recollect it from circumstances?

Mr. T. I could ascertain probably, when you arrived.

Mr. R. Do you remember when Admiral Thomas left?

Mr. T. I really cannot recollect dates of those things, they slip out of my mind.

Mr. R. Do you recollect the fact?

Mr. T. I recollect the fact of your coming.

Mr. R. Who advised you as sheriff, after my arrival?

Mr. T. Dr. Judd was the principal adviser I had.

Mr. R. Did you ever resort to me?

Mr. T. Yes, I believe I asked your advice on one or two occasions.

Mr. R. Who made out the papers in Charlton's case?

Mr. T. I do not recollect.

Mr. R. Do you recollect something in regard to Charlton's sale, do you know if I made out the papers in that case?

Mr. T. I know that you dictated two or three documents in regard to that case, perhaps more; I know of two or three that you had much to do with.

Mr. R. And in the Eagle case, who made out the papers?

Mr. T. I believe in that case, you were the principal person; as far as I was concerned, I received some instructions from you.

Mr. R. Did you receive any instructions that I did not give you?

Mr. T. Not that I can recollect of. I do not recollect any now.

Mr. R. Were you not in the habit of resorting to me for advice in all those cases?

Mr. T. No, I think not, my impression is that I consulted with Dr. Judd.

Mr. R. Did Dr. Judd advise you or did he order you?

Mr. T. He used to advise me, I do not know that he ever ordered me.

Mr. R. What was the nature of his advice?

Mr. T. It was according to the nature of the case.

Mr. R. Was it dictatory or peremptory?

Mr. T. It was not dictatory or peremptory, but it was generally to the point.

Mr. R. Did you conceive yourself bound to follow it?

Mr. T. Yes, I have stated before that I looked upon Dr. Judd as a person to advise me in things that I was ignorant of.

Mr. R. Did he ever order you to attach any property?

Mr. T. The writs were all signed by the Governor, and I used to follow them up to the best of my abilities. Dr. Judd used to tell me to be on the alert. All my papers were from the Governor.

Mr. R. Would you have acted upon a warrant signed G. P. Judd?

Mr. T. I cannot tell, probably not, or however, I might have done so.

Mr. R. What was the nature of the blowing up you got in the Eagle case?

Mr. T. It was a small matter in court, several gentlemen were present at the time.

Mr. R. Was it an authoritative blowing up?

Mr. T. It was a blowing up for a real, or supposed neglect of duty in my official character.

Mr. R. Did you consider at any time, Dr. Judd more than the mere mouth-piece of the Governor, the translator and interpreter of what the Governor wanted you to know?

Mr. T. I considered him to know the wishes and views of the Governor, who communicated his ideas to me by him.

Mr. R. As the Governor's interpreter?

Mr. T. Probably. I only know that I was advised by Dr. Judd as to my office as sheriff. His position in Government at that time I do not know myself.

Mr. Ten Eyck. The papers you were in the habit of receiving from the Governor, and signed by him, were they direct from the Governor or Dr. Judd?

Mr. T. Sometimes from the Governor, and sometimes from Dr. Judd.

Mr. T. E. With regard to this blowing up, was the result of that your deprivation from office?

Mr. T. No, sir, I should imagine not.

Mr. Ricord. How came you to go out of office?

Mr. T. I gave it up for two reasons. I could not hold it without taking the oath of allegiance, and I found it did not pay.

Mr. R. It was voluntary on your part?

Mr. T. Yes, so far as pecuniary considerations went. I believe that I stated at the time that I meant to give it up.

Mr. T. E. Do you know who is the authorized and proper officer of the Government to grant licenses?

Mr. T. The Minister of the Interior, I believe.

Mr. T. E. If you were an applicant for an office, to whom would you apply, or to whom have you done so heretofore?

Mr. T. To Mr. Judd.

Mr. T. E. Why?

Mr. T. I have applied to him heretofore.

Mr. T. E. I ask simply the reason?

Mr. T. Because I supposed he had more influence with the Government than any other person, and more likely to get the office.

Mr. R. You say before the present laws. Who would you apply to now?

Mr. T. I have applied to the Premier.

Mr. R. Do you speak native?

Mr. T. No.

Mr. R. If you had to communicate with the Governor or Premier, should you apply to some one who could?

Mr. T. Probably I should.

Mr. R. Who would be most likely to serve you?

Mr. T. Any one probably would do me that boon who is acquainted with the native language.

Mr. R. To whom would you have applied before the new laws?

Mr. T. To Dr. Judd, because he was acquainted with the native language.

Mr. T. E. Is that the only reason?

Mr. T. And on account of his influence.

The Court then adjourned till Wednesday, the 25th instant, at 7 o'clock, P. M.

# SEVENTEENTH DAY.

The Board met at the hour appointed.

Mr. Lorrin Andrews sworn by Mr. Hopkins.

Mr. Ten Eyck. Judge Andrews will you be kind enough to state what office you hold?

Mr. Andrews. I hold, under the Governor of Oahu, the office of Judge for the island of Oahu. My first commission contained all the departments of a Judge. It has in view all those acts which can be performed by a Judge in the island of Oahu, excepting, however, native cases.

Mr. T. E. Is there any style of the court?

Mr. A. The Court of Oahu, I believe. I frequently sign my name, Lorrin Andrews, Judge of the Court of Oahu.

Mr. T. E. The question I wish particularly to call your attention to is this: are you successor of the Governor as a Judge?

Mr. A. I consider myself successor of the Governor in all foreign cases—my commission runs to that effect.

Mr. T. E. Is it a court of record?

Mr. A. Yes, sir.

Mr. T. E. Who has the charge of the documents and papers relating to the court?

Mr. A. I have them I suppose—they are in my possession at present.

Mr. T. E. Did you receive them from the judge whose place you took? I mean all the documents relating to foreign cases.

Mr. A. I received some of them from the Governor himself, some from Mr. Ricord, and some from Dr. Judd.

Mr. T. E. Who has the custody of all these papers, by law, as you understand?

Mr. A. I understand that I have now.

Mr. T. E. Who did have before you took possession of the office?

Mr. A. I suppose the Governor had.

Mr. T. E. Have there been, or are there now, any books of record of the proceedings of the court, or how are the proceedings kept?

Mr. A. I suppose this is the way: every document belonging to a case is kept, and filed, and put up in a bundle. Not having time to record all these documents in a book, I keep them in separate bundles.

Mr. T. E. Then am I to understand that all the papers relating to our particular case are bundled by themselves and put away?

Mr. A. That is the way I do now, and many of them came into my hands that way, and that is one reason why I follow the plan. I

began by keeping a book, but found it impossible to continue the practice.

Mr. T. E. That I understand was the case before you took office.

Mr. A. I infer so from the fact of my papers having come into my hands in that form. I have seen books that I call books of record, but they are most in the native language. In the native court there are some.

Mr. T. E. Do they relate to civil or police cases?

Mr. A. To both, I believe; but I have not examined them sufficiently to know what they are exactly.

Mr. T. E. Have you ever seen a record kept in a book of any of the proceedings of Ladd & Co.?

Mr. A. I have not—not in a book.

Mr. T. E. Have you seen any record at all?

Mr. A. Yes, sir.

Mr. T. E. How is that?

Mr. A. It is a bundle of papers amongst a number of I cannot tell how many, some ten, fifteen or twenty, perhaps.

Mr. T. E. That is the manner in which the records of the proceedings against Ladd & Co., in your hands, are kept?

Mr. A. So far as I know.

Mr. T. E. Have you those papers with you?

Mr. A. I have a copy of such as I understood to be requested by the note of the arbitrators.

Mr. T. E. I desired the originals.

Mr. A. There is a copy made.

Mr. T. E. Are these copies of all the papers?

Mr. A. These are all that had any relation to the subject mentioned in the arbitrators' note. There are other papers which I could not see had any particular relevancy.

Mr. Ricord. This is a plenary record, I presume, of the proceedings of the Hawaiian Treasury Board against Ladd & Co.

Mr. T. E. I would ask what the arbitrators desired Mr. Andrews to bring with him?

By the Board. The record of the case of the Hawaiian Treasury Board against Ladd & Co. That is what Mr. Brinsmade requested of us.

Mr. T. E. Are these all of them?

Mr. A. There are some which speak of Ladd & Co., but in my estimation the substance of all the points that could be required are here. I followed the note as nearly as I could.

Mr. T. E. I would state that this is not what I want. I wanted the original papers in the case. Of course the Judge would bring them with him and keep them in his custody, and take them away with him. I did not desire that they should be filed with the arbitrators,

but I did wish to introduce the original papers in the case. Of course they should not go out of his custody. I did not wish a copy.

Mr. Ricord. I suppose you want it printed afterwards.

Mr. T. E. If I had got through my evidence, then the copies might be useful certainly.

By the Board. Is there any objection to bringing the originals here?

Mr. A. We do not allow them to go from the court.

Mr. T. E. I suppose when the court goes they go with the court. I do not want to make any argument about it, but I want the original papers, the copies are not of any use.

Mr. Ricord. The object is, I suppose, to examine the handwriting.

Mr. T. E. I will explain my object by and by.

Mr. A. I could bring them with me and take them with me. I could get them in fifteen minutes.

Mr. T. E. The former Judge is not here.

Mr. A. I summoned him to appear here at 8 o'clock.

By the Board. Perhaps it is better then that the Judge should get those papers.

Mr. T. E. Yes. If the Governor, his predecessor, could be here I should wish it.

Mr. Ricord. (To witness.) I understand you to say that those papers have been in your custody since you came into office.

Mr. A. I am not certain whether they were among those handed in a very few days after my advent to office, for when the Governor handed them over to me I did not examine them. Afterwards Dr. Judd said he had some, which he handed over to me, and I put them away. Afterwards Mr. Ricord sent some, and I employed a man to index them and put them away in order.

Mr. T. E. When you came into office and the Governor sent you some papers, were the papers in question among them?

Mr. A. I do not know whether they came from the Governor, from Dr. Judd, or from Mr. Ricord; but I think it is more probable they came from the Governor or from Dr. Judd, because Mr. Ricord sent in his papers later than they did.

Mr. T. E. Those were in your office when you took office?

Mr. A. I presume so.

Mr. T. E. Where were they kept?

Mr. A. Those that I found were in a little room next to the room where the court used to be held.

Mr. T. E. How were they kept?

Mr. A. They were in some pigeon-holes over a desk.

Mr. T. E. I understand you to say that some were handed in by Mr. Ricord, and some by Dr. Judd?

Mr. A. Yes.

Mr. T. E. How long since?

Mr. A. Dr. Judd furnished me with a trunk and handed over most of his say within two or three weeks after I took office, but not all at one time.

Mr. T. E. When did you take office?

Mr. A. On the 19th September, 1845. About the 24th or 25th of the same month I commenced business.

Mr. T. E. Have the papers which were left with you by Dr. Judd, or the papers which were left with you by Mr. Ricord, been taken away since?

Mr. A. Yes.

Mr. T. E. Who took them?

Mr. A. Some time afterwards, say three or four months, but I cannot tell how long, Dr. Judd asked me for the sight of those papers.

Mr. T. E. All I ask is if they were taken away?

Mr. A. Dr. Judd took them.

Mr. T. E. How long ago?

Mr. A. Say eight or nine months ago.

Mr. T. E. When were they brought back?

Mr. A. He kept them, as near as I can recollect, some three or four weeks.

Mr. T. E. By what authority did he take them?

Mr. A. He came to the court and asked me for them.

Mr. T. E. You gave them to him?

Mr. A. Yes; and at that time I did not know of the existence of those papers. He asked for them naming them.

Mr. T. E. Have they ever been taken out since he returned them eight or nine months ago?

Mr. A. I believe not.

Mr. T. E. Did any one take them from your office about the 12th of August last?

Mr. A. I do not recollect that they did.

Mr. Ricord. I think you confuse the dates. I think they were borrowed by Mr. Judd for me about that time, I could not go myself for them.

Mr. T. E. I thought the Judge said eight or nine months ago.

Mr. A. I may have made a mistake about the dates.

Mr. T. E. That may have been the time then? Is it the habit to allow papers to be taken out?

Mr. A. Not since that time. During the last three or four months we have adopted that principle.

Mr. T. E. How was it before?

Mr. A. I cannot say. I suppose the practice had been rather loose.

Mr. T. E. Is it not a fact that the practice has been very loose—that people have been able to have access to the records.

Mr. A. My judgment is that there has been a loose practice, and of late I have adopted a more stringent system. I did so as I came to know how sacred those things are considered in other countries.

Mr. T. E. I did not ask with the view to make any reflection upon yourself, but merely with regard to the way in which things were before. Have not these things been out of your hands for two or three weeks at a time?

Mr. A. They have. I did not know the impropriety of doing it as I do now.

Mr. T. E. Do you know if all the papers Dr. Judd took away have been returned?

Mr. A. I do not.

Mr. T. E. You know you gave a bundle, and that there was a bundle returned?

Mr. A. Yes.

Mr. T. E. They were taken without a receipt specifying the particular papers, you merely got a receipt for the bundle, perhaps?

Mr. A. Yes, for the bundle. Dr. Judd wrote it, and two or three weeks afterwards they were brought back; but I do not know whether they were the same papers, I only know that they looked like the same, and that the same envelope was round them.

*Cross-Examined by Mr. Ricord.*

Mr. R. Judge I wish you to identify the papers. [Handing some papers regarding the Hawaiian Treasury Board v. Ladd & Co.] Did you ever look them over?

Mr. A. I never looked them over until to-day.

Mr. R. Do you know Governor Kekuanaoa's handwriting?

Mr. A. Yes, that is it, (upon the judgment confession,) I see it very frequently, almost every day.

Mr. R. These other papers I wish you to identify also. Do you think that to be handwriting of Robert Boyd (upon the sheriff's returns)? Is this also his writing, and do you know it to be authentic?

Mr. A. I do.

Mr. R. And this is the Governor's handwriting (upon the execution)? I think they are all authentic and in Governor Kekuanaoa's handwriting.

Mr. A. Yes, I should call them so.

Mr. R. I understood, however, the question before the arbitrators not to be about the papers. We have not got over the power of Dr. Judd as proved by his acts, and I would like to ask Judge Andrews the question on that point. I would like to know whether you knew the Rev. Mr. Bingham?

Mr. A. Yes, sir.

Mr. R. Who was Mr. Bingham?



**Mr. A.** He was a man who came out here as a missionary in 1819 or '20.

**Mr. R.** How long did he reside here?

**Mr. A.** He has been gone some five or six years—he lived here about 20 years.

**Mr. R.** Had he much influence with the King?

**By the Board.** You are on the defensive.

**Mr. R.** I am, sir. Mr. Andrews was surrendered to me, and I have a right to extract from him cross-testimony in my behalf as the witness of my opponent.

**By the Board.** We should think this irrelevant.

**Mr. R.** The question before the court relates to the power of Dr. Judd as proved by his acts. The testimony introduced to-night is irrelevant, and I thought of objecting to it but feared I should be overruled. I want to show that Dr. Judd's holding power, and Mr. Bingham's holding power, and Dr. Judd's giving advice, and Mr. Bingham's giving advice, were parallel.

**By the Board.** But you must prove that by and by, after they have got through with their proof.

**Mr. R.** Do you want me to make a distinct issue?

**By the Board.** We think you are making it so.

**Mr. R.** No, but I should do so if I were to introduce witnesses now. Are they to go on then and examine their witnesses, and are you to decide on the evidence adduced on one side, and after your decision has been acted upon, am I to introduce my witnesses to prove that the decision ought to be in my favor? This is a vital point to me. I have questions to ask Mr. Andrews, as my adversary's witness, that I should not wish to introduce him to prove. It has been said again and again that I have no right to introduce a witness at present, and that all I can do is to elicit what I want to get at by cross-examination. Now, I should like to know, whether Dr. Judd had the same influence here that Mr. Bingham once had.

**Mr. T. E.** I object to that question until the arbitrators have it decided.

**By the Board.** We think cross-examination is intended as a test of truth, and also of discovering the power of the witnesses' memory as to what he has testified on the direct.

**Mr. R.** Shall I show you the purpose of cross-examination?—**Mr. Starkie** says, 1 vol., p. 186: "When a witness has been examined in chief, the adverse party is at liberty to cross-examine him." The author is there discoursing upon the topic of interest and disqualification of a witness, and in view of his subject he adds: "The power and opportunity to cross-examine, it will be recollected, is one of the powerful tests which the law has devised for the ascertainment of truth, and this is certainly a most efficient test. By this means the situation of the witness with respect to the parties and the subject of

litigation, his interest, his motives, his inclination and prejudices; his means of obtaining a correct and certain knowledge of the facts to which he bears testimony, the manner in which he has used those means, his power of discerning facts in the first instance, and his capacity for retaining and describing them, are fully investigated and ascertained, and submitted to the consideration of the jury, who have an opportunity of observing the manner and demeanor of the witness; circumstances which are often of as high importance as the answers themselves." For these motives and this latitude of cross-examination, Mr. Starkie gives as his authority, "*Bacon's Abridgement, Evidence, E. Hob. 325. Hale's Pleas of the Crown, 253, 259. Preface to Fortesque's Reports, 2 to 4. Vaughan's Reports, 143.*"

The same learned author, at the same page of the same volume, again adds: "A witness when once called, sworn and examined, although merely as to the formal proof of a document, may be cross-examined, although he be the real party to the cause." In support of this he cites *Morgan v. Brydes, 2 Starkie's cases, 314 and 437.*"—He continues: "And it has been held, that if a witness has once been called into the box and sworn, he may be cross-examined by the opposite side, although he has not been examined in chief." The cited authorities which he gives for this are, "*Phillips v. Eamer, 1st Espinal's Cases, 357; and Rex v. Brooke, 2 Starkie's Cases, 473.*" And he further adds: "If the witness be sworn, and would be a competent witness for the party calling him, the adversary will be entitled to cross-examine him, although he has not been examined in chief," upon the authority of same cases: *1 Esp. C., 357; and 2 Starkie's Cases, 473.*

It may be I want to impeach the Judge's memory. You cannot gather from my question what my purpose is, but you would compel me to divulge the routine by which I am going to arrive at the secrets of his mind. Mr. Starkie very tritely remarks upon this artifice of cross-examination, that "It is not easy for a witness who is subjected to this test, to impose upon the court; for however artful the fabrication of the falsehood may be, it cannot embrace all the circumstances to which the cross-examination may be extended; the fraud is therefore open to detection for want of consistency between that which has been invented, and that which the witness must either represent according to the truth, for want of previous preparation, or misrepresent according to his immediate invention."

Now I might ask him questions which the court might know he answered falsely, and which I might be able to show he answered falsely.

By the Board. If you want to test his memory you may go on, but in cross-examination you must confine yourself to what has been asked on the direct.

Mr. R. Do you want to stop me in my cross-examination, and

make me divulge my object? That would be putting the witness on his guard. I contend that I am at perfect liberty to ask him what questions I like. I never knew a cross-examination to be curbed. I have known a witness to be cross-examined a whole day, although very few questions were put to him in chief.

By the Board. If your object is to test the witness' veracity —

Mr. R. I do not think it fair to make me say what is my object, since the law is, as already shown, that "a witness when once called, sworn and examined, although merely as to the formal proof of a document, may be cross-examined, although he be the real party in the cause. And if a witness has been called into the box and sworn, he may be cross-examined by the opposite side although he has not been examined in chief." The very thing I contended for in the case of Dr. Wood, that if called upon the stand a witness may be cross-examined, even though he was not examined in chief. The weight of authority is altogether in favor of my claim to cross examine a witness called to the stand, even though not examined in chief. And therefore it cannot be possible to confine me, the adverse party, in cross-examining to such points as have been brought forward by the examiner in chief. I would ask how can the cross-examiner confine himself to points introduced by the other party, when the other party has introduced no points at all? And yet, according to the authority just cited, he has a right to cross-examine when no examination in chief has taken place.

Mr. Ten Eyck. I have only one single remark; cross-examination is intended to test the witnesses veracity. But what can be the object of cross-examining Mr. Andrews? He must cross-examine him on matters which I have directed his attention, otherwise, it can be no cross-examination. The very meaning of the words shows that the only possible object of cross-examination is to test the accuracy of the witness, and this is in accordance with what Mr. Ricord has read. Now, by examining Judge Andrews on subjects I have not called his attention to, how does it test his accuracy? I am not prepared with books, but if the arbitrators have any doubt on the subject, I can satisfy them that this cross-examination is not unlimited to the extent the gentleman says, and that it is confined or limited to the subject-matter, to which the witnesses attention has been called, by the opposite counsel. I called his attention to facts, and Mr. Ricord may cross-examine him, but he must not branch off, and go on to defend his case, before I have got through with my testimony. Does he not try to show that Dr. Judd had as much, but no more authority than Mr. Bingham, in order to disprove an assumption which I have not been willing to submit to your decision, namely: that Dr. Judd was a general agent of the Government. It will be remembered the reason of his question was not given us, because the witness should not be put upon his guard, although he attempted to

disprove the very thing that I am attempting to prove, namely: ~~that~~ Dr. Judd was a general agent of the Government.

Mr. Ricord. I do not know gentlemen what this means, unless it means what I contend for. I will read the passage again.

Mr. R. read again the same passages from Starkie's law of evidence, 186 and 187.

Now, if I am to be confined in my cross-examination of a witness called upon the stand, to what he was asked in his examination in chief, and he has been asked nothing, I do not see how that law applies. Yet here are many decisions which Starkie cites, to show that when a witness is called upon the stand and not examined at all, but simply sworn, the adverse party has a right to cross-examine him. The gentleman says, however, I am to be confined to the topics which he has introduced, while in the cases cited, the supposition is that none have been introduced—none at all! This is the most strange position I have had yet, and the book says clearly, that though he has not been examined in chief, the adverse party may cross-examine him.

By the Board. It is not a parallel case, for Mr. Andrews has been examined.

Mr. Ricord. Not parallel? The authority does not say to what extent, it leaves the inference to be drawn from the fact that follows. It is stated he may be cross-examined, though he has not been examined in chief. As to what the gentleman says, i. e. that he will show authorities to prove that there is a limit in cross-examination; I can prove the reverse. I am not prepared to-night, but I shall come most amply equipped and armed the next time I come here.—I certainly do claim the right to cross-examine Judge Andrews, and not to be limited. He is not my witness, but I want to shake what the gentleman would prove by him, and if I can do so by eliciting the truth, I shall be most happy to get at it. I have raised no quibbles against the questions put by the other side; I hope the court will bear me witness to that fact. There are facts in the memory of Judge Andrews which I want to get at,—but I will abide by what the arbitrators say.

By the Board. We think you are decidedly wrong Mr. Ricord.

Mr. R. Then I except to that decision. I think it is contrary to law and equity. (To witness:) Judge Andrews, who returned you the papers spoken of as having been taken out of court?

Mr. A. I do not recollect.

Mr. R. Do you recollect whether Dr. Judd did?

Mr. A. I do not recollect whether you came, or Dr. Judd, or Mr. Sea, or who.

Mr. R. Was it told you for what purpose they were borrowed?

Mr. A. When Dr. Judd took them he did not tell me for what

purpose he did so. Afterwards I learnt from you that you wished for them and had borrowed them.

Mr. R. Did you learn from me that I 'requested Dr. Judd to borrow them for me?

Mr. A. I have some faint recollection of hearing something of that sort said; yes—I think you did,—you or somebody else said you had requested Dr. Judd to borrow them. It is very faint in my mind; I hardly dare to say it was so.

Mr. R. Would you more readily confide documents in the hands of one in the position of a Government officer, than in those of a man not under official oath and responsibility?

Mr. A. Yes.

Mr. R. Upon what principle?

Mr. A. In the first place, that he would be more concerned for the affairs of Government, and also that a sworn officer of Government should feel himself under more obligations to be careful of such papers.

Mr. R. Would you so far consider these documents belonging to the King as to be confided with the King's officers?

Mr. A. According to the question that was asked me a while ago with regard to the loose way in which business was done—I supposed there was no harm in lending them to Dr. Judd, or yourself, or Mr. Richards, or any officer.

Mr. R. Did any one ever caution you to the contrary?

Mr. A. Yes.

Mr. R. Who?

Mr. A. Yourself, and Dr. Judd, and Mr. Hopkins frequently.—We have frequently talked of it, and of the necessity of adopting certain principles. That is since other papers have been called for by other parties, and various affairs have been brought up to lead to that decision.

Mr. R. Did I on that occasion request you not to entrust me with papers?

Mr. A. Yes, on some occasion, I have forgotten what precise one. I forget whether on that occasion or another you urged me to make some rule on the subject.

Mr. R. How was Kekuanaoa in the habit of keeping his papers?

Mr. A. I do not know. I have never been informed. My impression is that he kept some, and that Dr. Judd perhaps kept some, and you some.

Mr. R. Did you ever hear that they were put in our possession for safe keeping, for the want of proper archives?

Mr. A. I did hear that there had never been a proper place for the papers belonging to the court, and therefore the more valuable ones had been put in your possession, or that of Dr. Judd,—something of that sort.

Mr. R. You would hardly know the papers, whether they were all there?

Mr. A. I should not. I have not seen them since some time ago, when Mr. Ladd took some copies, and I assisted him in seeing that the copies were correct.

*Direct Examination Resumed.*

Mr. Ten Eyck. What was it you said that you had heard about valuable papers being placed in somebody's hands?

Mr. A. I am not able to state the occasion or person; we have had various and repeated conversations about the method of keeping papers, and in some of those conversations that idea has been expressed, that heretofore papers have been given to different persons for safe keeping.

Mr. T. E. Do you mean that those papers should be placed in Dr. Judd's or Mr. Ricord's hands for safe keeping?

Mr. A. That they were so. The idea was this, that Dr. Judd had those papers for safe keeping.

Mr. T. E. May I ask you was it at the same time said that the Governor had placed those papers in his hands for safe keeping?

Mr. A. The Governor and I never had any conversation about it.

Mr. T. E. You said you would rather place those papers in a Government officer's hands, because he would be more interested and also sworn to support the Government; but suppose that Government officer were interested, would you then prefer to confide the papers with him?

Mr. A. Supposing as at present, there were a proper place to keep the papers, I would not do so.

Mr. T. E. Suppose there was a Government officer interested in the very case, I do not think you mean that in such a case you would rather have them in his hands than those of a disinterested person?

Mr. A. No, I should not.

*Re-cross-examination by Mr. Ricord.*

Mr. Ricord. Are you an officer of Government?

Mr. A. Yes.

Mr. R. Of this Government?

Mr. A. If a judge is an officer of Government I am one.

Mr. R. Have you any archives?

Mr. A. I have.

Mr. R. Do you know if there was any one appointed recorder?

Mr. A. Not that I know of.

Mr. R. Do you know that the law appoints Dr. Judd interpreter and recorder?

Mr. A. I was wrong at first;—the law appointed Dr. Judd with in the last five years as recorder and interpreter.

Mr. R. What was his duty?

Mr. A. My impression was that it was his duty to take care of documents, and also to interpret in a case of foreigners. I was living far away, and the idea in my mind is rather indefinite. I thought it alluded at first to the recorder of a court.

Mr. R. Would it be natural for the recorder to have the records of the Governor's court before your appointment?

Mr. A. I suppose so.

*Direct Examination Resumed.*

Mr. T. E. But suppose he was recorder of the court of Oahu, —would he have charge of the records of the state department?

Mr. A. Not if that was another department.

Mr. T. E. Was Dr. Judd appointed recorder of the court of Oahu and interpreter to the court of Oahu?

Mr. A. No.

Mr. T. E. What did you understand his duties to be?

Mr. A. My impression is that all documents which needed translation he would translate.

Mr. T. E. Had you any idea by that appointment he was to go into the Judge's chambers and record all the papers?

Mr. A. I would not say all. From the manner in which the courts have been brought up, from being no courts at all, I would suppose that the Government have been in the habit of making use of different missionaries and other friends to help, as I have myself been employed.

Mr. T. E. When did Dr. Judd's term of office as recorder expire?

Mr. A. I do not know.

Mr. T. E. Did he hold that office in November '44 and in August '46?

Mr. A. In August, 1846 I presume not; about 1844, I cannot say.

Mr. T. E. What was his appointment in '44,—was he not Secretary of State for Foreign Affairs?

Mr. A. I really cannot say; I was living on another Island and did not pay much attention to Government matters.

*Cross-examination Resumed.*

Mr. Ricord. I would like to know whether by recorder you do not mean the custos of records? Now was he the custos or keeper of records?

Mr. A. My supposition is or was, that all his own writings as an agent of Government he had a right to keep, and that as recorder he was also to put on record all that he was requested to by the King, Governor, or any body else.

Mr. R. Do you know of any law repealing the law creating Dr. Judd interpreter and recorder to this day?

Mr. A. I do not.

Mr. R. Do you know whether Dr. Judd held the papers which he borrowed of you for fifteen minutes in his own possession?

Mr. A. I do not.

Mr. R. Do you know how long he did hold them?

Mr. A. I do not. I only know the time which they were out of court; in whose hands they were I do not know, excepting that you said part of the time they were in your hands.

Mr. R. I had them fifteen minutes after Dr. Judd got them from you, and had them all the time. Is there any act of legislature by which you hold the records?

Mr. A. I do not know of any. I hold them ex-officially. There is no act telling me to take them that I am aware of.

Mr. R. Is there not an act giving the records to Dr. Judd?

Mr. A. I do not know unless it can be inferred from his former office.

Mr. R. If there is no other that must be the one.

Mr. Ricord here read to the witness from the Hawaiian Laws as follows:

## “ CHAPTER L.

“ Resolve in relation to the appointment of a Government Interpreter and Recorder.

“ Whereas, this Government in its connection with foreigners is often embarrassed for want of acquaintance with the routine of business in other countries, it is therefore hereby recommended—

“ That His Majesty the King should appoint some foreigner as Recorder and Interpreter for the Government. His business shall be to superintend the arrangement of Government documents, and act as interpreter at all trials of foreigners before the Supreme Judges. He shall also give information as to the manner of conducting business in foreign countries. He shall also be present as interpreter whenever His Majesty transacts any Government business with any foreigner, and it shall be his duty to give information on the subject of that particular business as done in other countries.

“ It shall be his duty to attend on trials before the Governors whenever directed by His Majesty; and inasmuch as there is often great embarrassment from a misunderstanding of language, or from the real ignorance of the interpreter, it will therefore be particularly proper for foreigners who wish to speak to His Majesty on any business which requires his official action, to first call on the legally appointed interpreter.

“ This Resolve of the House of Nobles and House of Represen-



tatives, has received our signature this twelfth day of May, in the year of our Lord one thousand eight hundred and forty-two, at Lahaina, Maui.

“ (Signed,) KAMEHAMEHA III.,  
“ “ KEKAULUOHI.”

Page 185. Translation of the Constitution and Laws.

“ At this meeting of the chiefs the following persons were appointed officers of the kingdom.

“ The Representative Body appointed Paki, Kanaina, Kaauwai and Kapena, Assistant Supreme Judges: the King appointed Dr. G. P. Judd, Recorder and Translator for the Kingdom.”

Translation of the Constitution and Laws. Page 200.

If Dr. Judd was appointed according to that his duties are most particularly defined.

Mr. T. E. There is nothing in here which gives the interpreter any custody over the court records. I wish you would leave those papers a moment Judge Andrews. I should like to have the Governor sworn, and would you be kind enough to act as interpreter?

Governor M. Kekuanaoa sworn by Judge Andrews, who acted as interpreter during his examination.

Mr. T. E. Mr. Andrews, will you be so good as to ask the Governor if he recollects about two years ago being at Mr. Ricord's house in company with Mr. Judd and Mr. Ladd one evening or rather afternoon?

Mr. A. (After questioning the Governor and receiving his reply.) He recollects it—he was there.

Mr. T. E. Ask him, if you please, what he was called there for?

Mr. A. He was called there to hear some statements from Mr. Ladd.

Mr. T. E. Will you ask him if he signed that paper there at that time? [The paper alluded to was a confession of judgment dated the 30th of October, 1844.]

Mr. A. Yes, he remembers it.

Mr. T. E. I understand him to say that while those gentlemen were there he executed this acknowledgment—this confession?

Mr. A. Yes, at that time and at that place.

Mr. T. E. Will you ask him where he was in the habit of holding his court?

Mr. A. At the fort.

Mr. T. E. Had he ever taken the confession of a judgment before that time from any person?

Mr. A. Yes, he thinks so.

Mr. T. E. Whose?

Mr. A. In the case of Mr. Ladd before.

Mr. T. E. Does he say he signed that paper on the 30th of October in Mr. Ricord's office?

Mr. A. Yes.

Mr. T. E. I understood him to say, according to your interpretation, that he was in the habit of holding his court in the fort here. Had he ever held a court before in Mr. Ricord's office?

Mr. A. No.

Mr. T. E. What did he consider the court-room where he presided as judge? Where was the usual place of holding the court where he presided as judge?

Mr. A. In the fort, and in the Hale Kauwila, where the natives now hold their court, and at other times in the house where Mr. Wyllie now lives.

Mr. T. E. At those three places. Were those places called the court-houses or the court-rooms?

Mr. A. He also says sometimes in the house where I hold my court.

Mr. T. E. In that enclosure then.

*Cross-Examined by Mr. Ricord.*

Mr. Ricord. Will you ask the Governor whether Mr. Ladd voluntarily and of his own free will signed that document? [Producing the confession of judgment.]

Mr. A. He says he did of his own accord, so far as he knows.

Mr. T. E. That is admitted.

Mr. R. Ask the Governor whether he considered it necessary to have a confession of judgment like that signed in any particular court-room as if it were a trial?

Mr. A. He says such a thing was equally proper in the court-house or any other place. Wherever the judge should think best to meet the parties it would be proper.

Mr. R. Has the Governor power to appoint places for holding courts?

Mr. A. He says the Governor may appoint a place for holding courts where it is convenient.

Mr. R. It is of no use to put more questions, the books are ripe on the subject of confessing judgment. It is generally entered up by the clerk of the court, and the document merely signed by the judge.

Mr. T. E. Have you got through with the Governor?

Mr. R. I will ask him some more questions. I would like to know where he kept his records?

Mr. A. He says he had pigeon-holes for some, and some he gave to Dr. Judd to keep.

Mr. R. For what purpose?

Mr. A. For, he says, the Dr. to place in order, and to endorse on the outside, because they were connected with English matters that he did not understand. He found, by experience, that if his own scribes kept them they got mixed up.

**Mr. R.** Will you ask him whether he thought that a part of Dr. Judd's duty?

**Mr. A.** He says Dr. Judd took most care of the papers, because he and the Dr. did the business. At that time he (the Governor) was Governor and Judge, and Dr. Judd translator. He uses a word that means something which we have no term for, it means to keep things in order, a sort of assistant.

**Mr. T. E.** A general agent, perhaps.

**Mr. A.** He says Dr. Judd frequently wrote for him.

**Mr. R.** Ask him who appointed Dr. Judd to that office?

**Mr. A.** The King. He says Dr. Judd and he consulted each other frequently on matters and things.

**Mr. R.** Could the Dr. do any of those things that belonged to the Governor to do without consulting him?

**Mr. A.** The Governor says he could do just what he had given him to do. Frequently in business with foreigners, he would give him instructions to do so and so, and Dr. Judd would do it without consulting him further until it was done.

**Mr. R.** Did the Governor ever know the King to overrule any of Dr. Judd's acts?

**Mr. A.** He says yes, he has known it.

**Mr. R.** Does he recollect a bargain with a Chinaman at Waikiki, a bargain made by Dr. Judd in behalf of the King?

**Mr. A.** He recollects it.

**Mr. R.** Did the King refuse to ratify that bargain?

**Mr. A.** He says the King consented to that bargain.

**Mr. R.** Is the Governor sure that the King ratified that bargain?

**Mr. A.** Yes.

**Mr. R.** Ask the Governor whether he considers Dr. Judd to have been any intrinsic part of the Government of the Hawaiian Islands?

**Mr. A.** I have asked him in this form. Has Dr. Judd ever been a chief? It is a very difficult question to put.

**Mr. R.** I want to know whether he has been the Government of the Hawaiian Islands. Ask him if he has been King of the Sandwich Islands? If Dr. Judd has ever been King of the Sandwich Islands?

**Mr. A.** He says he has been a chief under Kauikeaouli and Ke-kauluoli (the King and Premier) to do their business.

**Mr. R.** Ask him whether that business was to be done by their command?

**Mr. A.** He says it was.

**Mr. R.** Will you please to ask him whether he could do any particular business for the King without particular instructions beforehand?

**Mr. A.** He says, nothing but what the law gave him to do, by which he means the acts of the legislature.

**Mr. R.** When Mr. Marshall went to England, did the Governor hear the King instruct Dr. Judd to find a suitable man to go to England?

Mr. A. He says the King and Kekauluohi instructed the Dr. to seek a proper person.

Mr. R. Did the King approve of Mr. Marshall if he could be procured?

Mr. A. He says yes. The thing was first brought up at a council held in Lahaina. It was discussed there, and afterwards carried into effect.

Mr. R. Ask him if he was present at Waikiki when the documents of Mr. Marshall were signed?

Mr. A. He says yes he was there, and the King and Dr. Judd and Kekauluohi and John Young.

Mr. R. Did the King approve of those papers?

Mr. A. He says the King approved of those papers, and so did Kekauluohi.

Mr. R. Why did not the King send for Mr. Marshall to come to Waikiki when the papers were signed?

Mr. A. He says because the thing was done in a measure secretly and in a hurry, and there was no person called to be present except those he has named. It was a secret session of the council, and they did not admit any foreigners.

Mr. R. Ask him whether that secrecy was in consequence of the cession of the islands to Lord George Paulet?

Mr. A. He says lest it should be generally known that Mr. Marshall was about to go.

Mr. R. Ask him whether Dr. Judd would subscribe a paper alone for the payment of a public debt, as President of the Treasury Board? Could he sign alone, or must he have some one to sign with him?

Mr. A. He says not unless the King signed with him. The idea is that he could not do so—that he would not have authority.

Mr. R. Who were associated with Dr. Judd as members of the Treasury Board?

Mr. A. He says Haalilio and John Ii.

Mr. R. You say you cannot convey the idea of Government. Will you ask him whether he thinks Dr. Judd ever was the aupuni (Government) of the Sandwich Islands?

Mr. A. He says no.

Mr. R. Has Dr. Judd been in the habit of acting on his own responsibility, or has he consulted with the King and Premier beforehand?

Mr. A. He says never any thing with regard to the Kingdom has been done until Dr. Judd has showed it to the King and Kekauluohi. When they gave their consent it went out as a thing to be done—when they put their veto upon it, or said we think it is not proper to be done, then there was an end of it.

Mr. R. Ask him if Dr. Judd ever did any thing secretly from the King and chiefs?

Mr. A. He says no:

Mr. R. Will you ask him whether in the early part of Dr. Judd's official life (1842) he was in the habit of consulting with the Governor before acting?

Mr. A. Yes, he says he frequently consulted with him.

Mr. R. When the King was at Maui, was the Governor in the habit of sending canoes with letters from Dr. Judd to the King.

Mr. A. He says yes when business pressed and no vessel was going, and Dr. Judd wanted to send papers, he sent them by a canoe, and if no vessel was coming back they would send answers by a canoe immediately.

Mr. R. Does his Excellency the Governor remember when I was first talked to at Dr. Judd's house—in the parlor?

Mr. A. He says he recollects the time.

Mr. R. Who were the persons present?

Mr. A. He says the Dr. was there and himself. He forgets whether the King was there—he thinks the King was not there.

Mr. R. Does he not remember the King and chiefs being present in the parlor with their swords and epaulets? Perhaps he may remember by that circumstance.

Mr. A. Yes, he recollects that meeting now.

Mr. R. Ask him if the King was there?

Mr. A. He says yes. At that time the King was informed and witnessed that Mr. Ricord was a lawyer. That was before Mr. Richards returned.

Mr. R. Does he recollect to have heard the King question me?

Mr. T. E. I will object. The gentleman shall not put leading questions, he is making the witness his own.

Mr. R. I am not making him my own, I am merely cross-examining him. I claim my right—my pound of flesh on this occasion.

Mr. T. E. I give way.

Mr. R. That is right. Does the Governor recollect when I was sworn into office?

Mr. A. Yes.

Mr. R. Who swore me into office?

Mr. A. He says it was before himself.

Mr. R. Who were present?

Mr. A. He says Dr. Judd was one.

Mr. R. I mean of the chiefs?

Mr. T. E. Please state what you want to prove.

Mr. R. That the King, the Premier, the Governor of Maui, and some of the other chiefs and chiefesses were present when I was sworn in.

Mr. T. E. I admit all that.

Mr. R. Was that before or after the conversation?

Mr. A. He says it was after the first meeting.

Mr. R. I bring this forward for the purpose of refuting the idea that the King did not bargain with me, but Dr. Judd, as was hinted yesterday.

*Direct Examination Resumed.*

Mr. Ten Eyck. The Governor has said that Dr. Judd never did any thing, or that nothing has been done by Dr. Judd until the King had assented to it. How does he know that? Does he know it of his own knowledge, or is it a mere opinion of his? Is that his opinion, or does he know it? He asserted it as a positive fact, but I do not suppose he meant it to be so understood.

Mr. A. He says he knows it, because there is nothing of any great importance done but what they all know, and he knows what the King and Premier knows.

Mr. T. E. But that is not the point. It is whether he knows that Dr. Judd has never done any thing with regard to the Government without the King's sanction.

Mr. A. He says he knows clearly. In the first place, because Dr. Judd has no wish to do so, and also because he always knows what the King is going to do.

Mr. T. E. Does he know every thing that Dr. Judd has done for the Government, about the business affairs of the Government?

Mr. A. He says he knows all.

Mr. T. E. Then ask him if he knows what Dr. Judd has done in the case of the Government against Ladd & Co.?

Mr. A. He says there were some transactions took place when Dr. Judd and the King were at Maui with which he is not acquainted because he was here.

Mr. T. E. Then ask him if he knows all that has been done by Dr. Judd here?

Mr. A. He says, yes.

Mr. Ricord. I object to this sweeping compound of all acts in the gentleman's question. I want some particular thing to be brought forward, then it would be a proper question. This omnium gatherum I do not like. Is it concerning the signing of a paper, or granting a lease, or what?

By the Board. If he has approved of them all it is not necessary for him to specify them all.

Mr. T. E. They are in the papers.

Mr. Ricord. That will never do. I protest against it. Are the papers all before the court? Where is the Belgian Contract? The gentleman wants to sweep that in with the others.

Mr. T. E. Ask him if he approves of all that Dr. Judd has done in connexion with the case between Ladd & Co. and the Treasury Board?

Mr. A. He says he knows all about it, and about all the proceedings of the Government, and about all the sales and executions.

Mr. T. E. And approves of all the concern, as I understand it?

Mr. A. Yes. When the business was commenced there was a consultation between him and the King and Kekauluohi and Dr. Judd. But since a different arrangement has been made in the Government he knows less.

Mr. T. E. I do not care about that. He knows about the sales, and judgments, and executions, and all that; he has approved of the whole concern. Does he know whether the King knows all the proceedings which have been had in that affair against Ladd & Co.?

Mr. A. He says he knows it by hear-say. He has heard it all.

Mr. T. E. From whom?

Mr. A. He heard some from himself.

Mr. T. E. Then, as I understand him, the King knows all about these proceedings the same as he does?

Mr. A. He knows them by hear-say—in a second-hand sort of way.

Mr. Ricord. I admit that.

Mr. T. E. Hold on, I have not got through yet. Will you ask him if the King has approved of all those proceedings under that judgment?

Mr. A. He says, yes.

Mr. T. E. Will you ask him whether, while he was judge, he kept any book of records of judgments entered up in his court—of civil cases.

Mr. A. He says he kept them on papers sometimes and sometimes in books.

Mr. T. E. Will you ask him whether there is any record in his office of the same case other than you have brought to-night?

Mr. Ricord. No other. The same rule is pursued in New York, they only *docket* their judgments *there*.

Mr. T. E. He has stated that Dr. Judd would not and could not sign a paper involving the Government without the King and Premier signed it. Ask him if Dr. Judd ever did sign a paper involving the Government without the King and Premier having signed it?

Mr. A. He said yes at first, but he merely meant that Dr. Judd went through the account and did the figuring, etc.; but I have put the question again and he says no.

Mr. T. E. Had he and his associates in the Treasury Board a right to sign papers without the King's signature?

Mr. Ricord. They have been allowed that power, but I believe they have never acted upon it.

Mr. T. E. Will you ask him whether as a member of the Treasury Board Dr. Judd would have any authority to contract a debt on behalf of the Treasury Board without the King and Premier's signatures?

Mr. A. He says, no ; but at the present time there is a different arrangement.

Mr. T. E. He had no authority and has never signed any paper?

Mr. A. No.

Mr. T. E. When he left the office of judge and transferred it over to you, ask him where those papers were at that time which you have brought in this evening?

Mr. A. He thinks that Dr. Judd had them at that time in his possession.

Mr. T. E. He said he has known the King to overrule Dr. Judd's acts. Ask him to state an instance?

Mr. A. He says at the time they were seeking a man to go to Europe, Dr. Judd fixed upon Governor Young, and so far as he could do it that was his appointment, but the King said no and stopped it.

Mr. T. E. Ask him for another instance?

Mr. A. He says there came up a question after Haalilio's death who should be his heir. Dr. Judd urged that the Government should take possession of his property and lands, but the King said no, but he would be his heir.

Mr. T. E. Well that was rather acquiescing in Dr. Judd's proposition. Let us have another.

Mr. A. He says there are many more but they do not raise to his mind at this moment.

Mr. T. E. Please ask him the time it was agreed to send Mr. Marshall to Europe?

Mr. A. He says he does not remember the date.

Mr. T. E. I have just found that it was in March, 1843. I wish you would ask him how long it was when the King came to Waikiki since he had been here before?

Mr. A. He cannot tell.

Mr. T. E. Ask him how long it was (after the King had landed at Waikiki) from the time that Dr. Judd first saw him there to the time that he left him with the papers signed?

Mr. A. He says the King arrived between 8 and 9 o'clock, and they were then in close council till 3 o'clock, when the papers were signed and sent off. The papers were signed at 3 o'clock, and Dr. Judd went with them to Honolulu, and the same afternoon Mr. Marshall went off.

Mr. T. E. Ask him if the papers were written in Waikiki.

Mr. A. He says they were drafted in Honolulu—they were prepared here and sent to Waikiki, and after consultation the King and Premier signed their names. At 3 o'clock the papers were sent here. Dr. Judd came with them, and Mr. Marshall went away; and in the evening Dr. Judd went back and reported that Mr. Marshall was gone and the papers.



Mr. T. E. Was Dr. Judd a member of the council at that time?

Mr. A. Yes, Dr. Judd was there and heard what they did, and had the writing to do. There were four that were considered the council, himself, Haalilio and others; but Dr. Judd was not one.

Mr. T. E. Ask him, if you please, who first suggested the idea of sending Mr. Marshall or any body else to Europe? Was it their own idea or that of Dr. Judd?

Mr. A. He says the idea was first suggested in their council by themselves, that they needed a foreigner to go to a foreign country, because they were in great difficulty and needed some one to go and help them. It was suggested by themselves, and the King said to Dr. Judd go and search for a proper person.

*Cross-examination Resumed.*

Mr. Ricord. Does he know whether I directed the proceedings of Sheriff Boyd under the writ directed to him in the matter of Ladd & Co.?

Mr. A. He says Dr. Judd did.

Mr. R. Did the Governor ever give papers to Dr. Judd or myself to keep, and if so what was the purpose of his doing so?

Mr. A. He says he did so because his place was not suitable for such papers. He gave them for safe keeping.

Mr. R. Did Dr. Judd ever vote in the legislature or in the council of the chiefs when they met for executive or legislative business?

Mr. A. He says, yes. He says they all sit together, and the President says, "Those who consent hold up your hands," and Dr. Judd has done so with the rest. He says Dr. Judd and Mr. Richards have been present when they were making laws, and then he voted. Usually Mr. Richards or Dr. Judd has acted as President, and they have usually used this form: "Those who consent hold up your hands."

The Court was then adjourned till Friday, the 27th November.

**EIGHTEENTH DAY.**

Mr. Ricord. Gentlemen arbitrators, before these proceedings commence, I would address you a few remarks touching the last meeting we had and some incidents connected with it. The subject is the cross-examining the witnesses.

By the Board. We think it but justice to ourselves to state here, that it may appear upon the record, the fact well known to you both, that we accepted this arbitration as *merchants* and *merchants* only, and that we are professionally unacquainted with the forms of courts, and comparatively ignorant of the technical and abstract questions of law. We have accepted this arduous and responsible duty with great reluctance, and only at the urgent request of two parties who have expressed themselves "mutually desirous to ascertain, liquidate and

settle" certain claims; and who have also expressed their confidence in our honesty and ability to do them justice.

We therefore think that some courtesy should be shown us on this account, and that on questions of law, many of which are yet unsettled, and others on which even those who have had a legal education differ, that more latitude of hearing should exist for the great object in view, than confining the examination so strictly to the *legal* relevancy of the point at issue. It was in this spirit that since our decision at the last meeting we have consulted the opinion of a person well versed in the forms of courts, and he pronounced our decision to have been erroneous. If it is thought important, however, we are ready to hear any remarks either party may have to offer.

Mr. Ten Eyck. I should like to be heard on the subject before your decision is reversed. The arbitrators decided at the last meeting, that Mr. Ricord should not cross-examine the witness upon matters to which I had not questioned him in chief, and I am now, for the first time, advised of that decision being altered. I feel some little pride of character and reputation in this matter, for, so far as we have gone, the arbitrators will bear me witness, that whenever I have made a statement concerning a point or principle of law, I have been able to satisfy the arbitrators that the position I assumed was sustained by authorities; and I am now prepared to show that the position I took in regard to the cross-examination of witnesses is sustained by books on evidence, and by the decisions of the Supreme Court of the United States. I would like to show and submit my authorities to the arbitrators.

Mr. Ricord. The point, if I understand it, is whether I have the right, without limit, to examine witnesses in the cross, or whether I should not be confined within the limits of those points which have been brought forward in the direct examination.

Mr. T. E. I maintain that the Attorney-General shall not cross-question the witness on any matter to which I have not directed his attention in the direct examination; that he may examine him only on those points to which I have called his attention. I do not want to argue the matter, I desire merely to submit my authorities.

Mr. R. I would rather argue it, that the Board may see the views of both parties.

Mr. T. E. Of course I have nothing to say in regard to the arbitrators making up their decision without having heard the parties; but after I have advanced a position, and they have supported me in it, I trust they will not change their decision without listening to my authorities.

Mr. Ricord. Will it not be satisfactory to have the views of the parties go before the umpire, in case it should be referred to one.

After a great deal of desultory discussion, Mr. Ricord took up the main question as follows:

**GENTLEMEN**,—I appear before you this evening to claim and urge a right under the compact, of which my client has been deprived by a decision at your last meeting. I mean the right to cross-examine my adversaries witnesses at full length, and without restriction or limit. Such a right, the principles of law and equity give me in the most positive manner. It is not likely you would have ruled the contrary opinion had I been prepared to show you the numerous authorities which sustained me in this right. But the principle of cross-examination being so commonplace it never occurred to me that any objection to my latitude in this respect, would be seriously urged by any lawyer, much accustomed to practice at the bar. Hence, I did not come prepared with the books necessary to resist Mr. Ten Eyck's objection, which objection he fortified with no other authority than his bare assertion, which I conceive should have had no more weight with you than my adverse assertion to the contrary, backed by such passages from Starkie's law of evidence, 1 vol., 186, as these:

"When the witness has been examined in chief, the adverse party, is at liberty to cross-examine him."

"A witness when once called, sworn and examined, although merely as to the formal proof of a document, may be cross-examined, although he be the real party in the case."

And "if the witness be sworn and would be a competent witness for the party calling him, the adversary will be entitled to cross-examine him although he has not been examined in chief."

Such plain and unqualified doctrines laid down by an author of such celebrity as Mr. Starkie, and fortified besides, by authority derived from the high decisions of the courts of England, it seemed to me, should have prevailed, at least, in inducing you to take time for consideration; but, so far from this, you unhesitatingly refused me the right of latitude in cross-examining Judge Andrews, stating it to be your decision that the cross-examination of my adversary's witnesses should be confined to the subjects only, upon which my adversary had examined them in chief.

I now formally claim the right guaranteed to me by contract with Messrs. Ladd & Co. in the compact to cross-examine Judge Andrews, and every other witness which my adversary may introduce, at full length, and this, whether such witness has been examined much or little in chief, or whether he has been examined at all, so he has been sworn at the instance of my adversary. Such is the stern principle of law, which you have no power or right to overrule, for the parties have bargained together to be governed in the controversy before you, by the rules of law as well as of equity.

The clause of the compact, 13 July, 1846, which refers to Ladd & Co.'s proceedings before you, are simply in the following words: "*To appear and produce their proofs and arguments.*" The clause of the same compact, which refers to the proceedings of my client

before you, is simply in these words: "*The said King and Government, represented by said Attorney General, being allowed the like full latitude of testimony and debate, as aforesaid, before award.*" And the clause of the same compact, in view of which you took the arduous duties and stern responsibilities of arbitrators between the parties, is, that you "*shall not reject evidence for any but legal cause, and shall hear all the legal evidence offered by either party, before awarding*" in view of "*the like full latitude of testimony and debate before award,*" guaranteed to each by the compact.

These passages clearly do not import the kind of technical illegality arising from the forms and routine of examining and cross-examining the witnesses. They are manifestly intended only to operate upon the evidence itself, intrinsically considered as "*legal and admissible evidence,*" or "*illegal and inadmissible evidence.*" Not that you are to limit and curb the full latitude of legal evidence, which either party wishes to adduce.

The intention of the contracting parties manifestly appears to have been that if a witness was himself incompetent by reason of turpitude or personal interest, you are to exclude his evidence; but, that otherwise, you ought by the compact, not to interfere with the like full latitude allowed both parties, of examining and cross-examining him. The intention of the parties appears to have been to develop before you, all the evidence capable of being elicited from legal and competent witnesses. Such seems also to have been your understanding of the compact, on the 24th of August last, when you adopted the rules by which you ordered the parties to regulate themselves, in adducing their testimony before you. "*The party introducing a witness, to examine such witness at full length, and the party opposed, to examine each witness at full length.*"

The fullest latitude of examination and cross-examination, is thus seen to be conveyed alike by the words of the compact, and of the rules under it, made by you. The examination and cross-examination of the witness, Mr. Richards, while these proceedings were yet new, were conducted with unrestrained latitude.

The record of this trial will bear me witness, that hitherto, my own objections have been to the competency of the witness, on the score of pecuniary interest, which had those objections prevailed, would have excluded Mr. De Fiennes, Mr. Calkin, Dr. R. W. Wood and Mr. James F. B. Marshall, but they did not prevail, although you had previously decided that the sole cause for excluding a witness should be some pecuniary interest. But the objection to extent or latitude, in the direct or cross-examination, has in no case been urged by me. I should not have deemed myself at liberty, in the face of a solemn compact, allowing "*full latitude,*" to urge such an objection. I claim not the right of dictating to Ladd & Co. what relevant questions they shall put to any competent witness called upon the

stand, or how many questions they may ask such a witness. Their questions may be as numerous as the sand on the sea-shore, as long as space itself, and as verbose as the Belgian Contract,—they may sweep the whole ground of the item in dispute, or may be confined to any insulated fact connected with it, but under the same compact and your same rules, my right of cross-examination is not confined to the limit within which they chose to exercise their right of direct examination.

*“The law does not interfere as to the measure of proof, and the sufficiency, cannot, in the nature of things, be subject to legal definition and control.”* 1 Stark., 506.

The rules of law and equity by which the parties have covenanted to have you govern them, and this arbitration, also give me, the defendant, the very broadest scope or latitude of cross-examination. The word cross-examination in its etymology, as well as in its common sense signification, does not convey in ideal to the mind, my intention to impeach the veracity of the witness who is subjected to it. Listen to the common sense of Noah Webster's 4 mo. Dictionary, on the word “CROSS-EXAMINATION; *the examination of a witness called by one party, by the opposite party or his counsel.*”

The occasion affords an opportunity to impeach the opponent's witness no doubt, and if such witness be suspected open to impeachment, such is a very proper time to do it by entangling him in his words. But is it to be for one moment presumed that every witness introduced by both parties is a fair subject for impeachment—that none but rascals and prevaricating people are brought before a court to give testimony. This must be the *prima facie* conclusion, if every witness is to be cross-examined, and if cross-examination means an inquiry into the witnesses veracity. Now, the rule of law is that every man shall be taken to be innocent until proven to be guilty; such is the *prima facie* conclusion of the law; yet if there be any guilt in prevarication and falsehood or suppression of truth under oath, then the rule that cross-examination means an attempt to shake confidence in what the witness has stated on the direct examination, is establishing as a principle, that every witness sworn on behalf of one party litigant in a court of justice, shall be taken *prima facie* to be a liar by the other party, until he has, by the test of cross-examination, shown himself to be a truthful and honest man.

This view of the object of cross-examination seems to me to impose a very delicate duty upon you gentlemen arbitrators, when a gentleman of admitted integrity is introduced as a witness; when, for instance, such a person of truth as Judge Andrews has been introduced by my adversary, you are in this view driven to one of two alternatives, either to refuse me entirely, the right of cross-examination, or else to lend your official sanction to the presumption, that he is *prima facie* a prevaricator—nay, more—you have not even this op-

tion allowed you by the compact, which, as well as your rules, compel you quietly to look on and see the Judge of the Island sullied by the grossest of imputations, without the power to cry shame on such a barefaced attempt, or to order the cross-examiner to desist. Monstrous! This is never the understanding of cross-examination.

I will tell you the object of cross-examination as I humbly understand it, and I beg you will consider my view of this matter, as well as the views of the other party, before you establish such a horrible principle as the one just spoken of. My view is simply this: That the witness is not bound to answer any question that is not asked him by the party who calls him: for the uniform oath of a witness is to answer such questions as shall be put to him. The party whose witness he is, if he is shrewd, as my learned friend on the other side happens to be, will put no questions to his witness that he does not wish to have answered, and hence, all the facts will not have been evolved from the witness. This was the case when the witness, F. W. Thompson, was examined before you the other night by Mr. Ten Eyck. Mr. Ten Eyck stopped that witness whenever he was disposed to explain his answer, or to allude to any fact not exactly comprised in the question put to him by Mr. Ten Eyck. Now, not only can a witness thus limit the field of his answer, without being dishonest, as your decision pre-supposes; but I humbly apprehend it to be the sworn duty of every honest man sworn to testify before a court of justice, only to such questions as shall be put to him.

*Cross or opposite examination*, is to enable the other party to call out the rest of the testimony which the party on the direct has either forgotten or purposely omitted to elicit, and if he has reason to suspect the witness of a *suppressio veri*, or of a bias or an interest, then is a very suitable time for him to probe the witness' conscience or test his memory, or discredit his evidence. But to say that this is the main object or the avowed intention, or the sole intent of cross-examination is, to me, a doctrine at once unreasonable, impolitic and abhorrent.

The authorities of the books derived from the decisions of the courts of King's Bench in England, and which are quoted in the American courts, as sound and reasonable adjudication on this subject, go fully with me, and are become "*principles of law and of equity*."

Peake's law of evidence lays down the following: "The counsel retained on the other side, next cross-examines the witness; and the witness not being supposed friendly to his client as to the other party by whom he is called, he is not restrained to any particular mode of examination, but may put what questions he pleases. He may, for the purpose of trying the credit of the witness, suppose facts apparently connected with the case which have no existence, but in his own imagination, and ask the witness if they did not happen. No

mischievous can arise from this course of examination, for if the witness is determined to speak nothing but the truth, he will deny every thing so suggested, and the testimony of every other who is called will confirm him. But it frequently happens on the other hand that witnesses who have entered into a wicked conspiracy to defeat the ends of justice, and who, having made up their story together, agree upon the general features of the case, will, when examined out of the hearing of each other, by their variations in little circumstances, as to which they are unprepared, betray the villianry of their attempt."

This edition of Mr. Peake's able work, from which I have just quoted, was published in Philadelphia, under the superintendence of Josiah Randall, Esquire, with the American cases in notes. Messrs. Elijah Paine and William Duer, eminent counsellors of the New York Bar, in their work on the practice of the supreme court of that State, 1 vol., 527, thus remark, upon the right which the opposite party has to cross-examine witnesses introduced by his opponent:

"When a witness has once been sworn to give evidence, the other party may examine him, even it seems though he may give no evidence for the party who called him." *Espn. N. P. C.*, 157; 2 *Starke's C.*, 472. "In cross-examining a witness, the counsel may ask him leading questions, or indeed, any questions at all relevant to the case." 1 *Archibalds Prac.*, 193-4, *Esp.*, 68.

Such, then, I claim to be incident to my legal right of defence, under the compact, against the claims of Ladd & Co., and that you cannot debar me from it without impairing my right of defence, tying my hands and choking me into silence; for one doctrine well established is, that the testimony of the parties own witness, if adverse to such party, must be taken most strongly in favor of his adversary. The same rule holds in regard to the construction of facts in pleading, the doctrine regarding which, is that "*every thing shall be taken most strongly against the party using it.*" 1 *Sanding*, 259, and note 8.

In accordance with such, my sacred right of defence, a right which every party assailed has, in law, equity, justice and honor, the right to make defence to the utmost of his ability, I here insist, my client has the most unlimited privilege, as well under the words of the compact, as by the rules of law and equity, to cross-examine Dr. R. W. Wood, who was brought upon the stand, sworn and questioned by Ladd & Co.'s counsel and dismissed, without affording me an opportunity to cross-examine him; also to resume and complete my cross-examination of Judge Andrews, as the witness of my adversary. This, I was in the act of doing, when at the bare suggestion of Mr. Ten Eyck, you stopped me and decided that I should confine my questions to the precise topics upon which Mr. Ten Eyck, on behalf of my adversary, had seen fit to examine him on the direct.

That witness is most important, having resided here for the last 18 years, having served the King as interpreter, and in nearly the same

capacity as Mr. Judd is alledged to have served him; being acquainted with the origin and motives of the imputations of officiousness alledged against Mr. Judd; being acquainted with the fact, that at no time was it necessary to have access to the King through Dr. Judd; that parties could and did have access to the King through the medium of any other interpreter, as well as Mr. Judd, and that the King was accessible to the whole population, who needed not to take any man's opinions for the King's opinions; also, that it has been the universal custom of the foreign residents to try to fasten upon the King the acts and declarations of any individual who had the benevolence to serve him in matters affecting the little every day transactions of the foreign residents; and that the same imputation was cast upon the Rev. Mr. Bingham, with no more reason, while he resided on these Islands; that no layman had sufficient benevolence to serve as interpreter and friendly adviser upon foreign matters to the King; that the missionaries saw he was open to the low cunning and rapacity of such designing foreigners, as have often attempted to practice their Yankee tricks upon him, and tried to shield him by making him acquainted with the sinister motives of those designing men, and that thus whenever a white man volunteered the King his services, the current of opposition inevitably sets against him.

My honorable and very learned friend, upon the other side, forgot to elicit from his witness, Judge Andrews, any of these facts, and I have a right to call for them as well as many others, of which that witness is the repository. So likewise, I have in like manner an interesting list of questions to propound to Dr. Wood, upon topics, as well concerning his personal and pecuniary interest in connection with this subject, which affect his competency as a witness, as upon other points involving the two certain contracts under which the parties claim. Mr. Ten Eyck has also forgotten to ask Dr. Wood these questions, and Dr. Wood was suffered to be withdrawn from the stand, after having been examined in chief, without even affording me the opportunity to cross-examine him, which, when I subsequently demanded it of you as a right, was refused me.

I also have formally put in, in anticipation, my legal and stipulated claim to the right of cross-examining, as my adversary's witnesses according to the well settled and often decided principles of law, any witnesses which they have summoned as such, and have had sworn as witnesses. This was the case as the record will show, (see page 22) with a long list of witnesses.

They may examine these or not, at their option, but I claim the strict and stern right, according to the principles of law, to cross-examine them as Ladd & Co.'s witnesses, whether examined by Ladd & Co. or not, before proceeding upon the proper direct turn of my client, to open the defence and indicate my witnesses.

If my opponents have malpracticed and given me a legal advan-



age in this way, I am not as sworn counsel for the Crown, to abandon that advantage, and neither can I be compelled so to do. To allow my adversary to put a few well selected and choice questions to any of his witnesses that have been sworn without according me the privilege of cross-examining them, is neither fair nor legal, equitable, nor according to the terms of the compact.

It is not my intention so far to disrespect you gentlemen arbitrators, as to avoid claiming my stern rights as a party, upon the assumption that the arbitrators will suffer their minds to be biassed, if I do not keep upon the right side of them, but insist too strenuously upon compliance with the compact, and the rules of law and equity. You are incapable of any such bias, you have an arithmetical business before you, you have it in charge to do a particular business by particular rules and principles, which are well defined, and in which it is not possible to go astray. No part of those rules is to go according to party or private inclination, nor do I think you will, because a party has the honest and manly courage to insist upon his rights.

Mr. Ten Eyck rose and said. I stated when this question arose and I think the arbitrators will bear me out in my assertion—that as far as we have gone I have not, I believe, in a single instance, asserted to the arbitrators, a principle of law without having sustained my position and supported it by authorities. I can and shall do so now.

I have no occasion to say and repeat, as the gentleman has done over and over again, my confidence in the fairness and impartiality of the arbitrators, and that I do not suppose them capable of bias. I have no occasion to repeat such expressions, for I have submitted, or rather Ladd & Co. through my agency have submitted, this case to you, and they are willing to leave it to your examination and determination. The simple fact of their entering into the compact of submission, shows that they have every confidence in the justice and honesty which will direct your proceedings.

Mr. Ricord says, he never knew a lawyer urge a principle of this kind, who ever had much practice in a court. I do not claim to have had a great deal of practice in the United States, but I will venture the assertion, that I have had as much as the gentleman; and what practice I have had, and what books I have read, I profess to understand, and to have read those books with some care and attention. If the gentleman does not know what the courts of his native country have decided, it is not my fault; and when he urges positions which I *know* are not supported by the books, I must conclude that he has not read, or, if he has read, he has read without understanding those books of law which he ought to have *studied* and had at his tongue's end. I do not know either who the arbitrators may have consulted in this matter, nor do I care; but I know if any American lawyer has been consulted, and he has concurred in the views of the Attorney General, that he too is entirely ignorant of the decisions of the Supreme Court

of his own country, and he would best have consulted his own reputation if he had examined those decisions before he attempted to give any opinion on the subject.

In reference to the assumed analogy between the cases of Dr. Wood and Judge Andrews, there is a difference between those cases. Dr. Wood was called as our witness, and we went on to examine him, but Mr. Ricord objected upon the ground of his evidence being *hearsay*. That was the point upon which the question turned, and it did not arise upon the question of *cross-examination*. Mr. Richards was permitted to go on and give all kinds of testimony. He was in no wise restricted, either in giving opinions or answering questions. We have a right to quote his examination as a precedent.

With regard to Dr. Wood's testimony I had not got through my examination, and Mr. Ricord had not commenced any cross-examination. The cases are not parallel. The books lay down this doctrine, with regard to cross-examination, it is based upon the principle that the cross-examination is made the means of testing the accuracy, the truth, of the witness' statements, as well as his memory of the events he narrated. Now, how is that to be arrived at by cross-questioning him upon matters to which he has not alluded in his direct examination? Can you find out the truth so? Certainly not.

Mr. Ricord read from Peak's Law of Evidence, where it is said that the opposite counsel may, in order to test the credibility of the witness, suppose a fact. Certainly, to test the *credibility* of the witness generally, and not the truth of the matters, about which he has testified on his direct examination. Mr. Ricord says that the doctrine which I advance here, he considers as unreasonable, impolitic and horrible. Now I call it quite the contrary, and I insist that any other doctrine is illegal, absurd and nonsensical. And now then as to the quotation of the gentleman from Peak's Law of Evidence. This is what Mr. Ricord read: "The counsel may, upon the cross-examination, ask of the witness such questions as he pleases," &c. "May ask such questions as he pleases," *in regard to what?* Why, of course, in regard to the subject matter to which he has been testifying, not any questions he pleases, in regard to *every thing*, and the authority will not bear any such construction. I will say in regard to Peak's Law of Evidence, that it is an old book on evidence, and published in 1812; and in regard to Paine and Duer's work on practice, it is an old book on *practice*, and is not a Treatise on the Law of Evidence, published in 1929 or '30. I admit the gentleman has found there a case which would seem to sustain the position he has assumed. In support of the doctrine, the authors' cite the first of Archibald's Practice, an old work on practice, which was published something like a century ago.

Now, I will show to you, gentlemen arbitrators, what the modern decisions on the subject are. I will read to you the decisions of the

Supreme Court of the United States, promulgated by no less a man than Justice Story, than whom no man's reputation as a jurist stands higher in the United States or Europe. All his works have been republished in Europe, and are considered every where as sound law, as well as incontrovertible equity. I shall first read from Greenleaf on Evidence, a work lately published, (in 1844) and declaring the latest rules and practice in regard to evidence. Mr. Greenleaf is the Royal Professor of Law in Harvard University, and, if I mistake not, he is the successor of Justice Story as Dane Professor in that university.

Greenleaf, p. 522, sec. 445, says: "The rule is now considered by the Supreme Court of the United States to be well established, that a party has no right to cross-examine any witness, except as to facts and circumstances connected with the matters stated in his direct examination; and that, if he wishes to examine him to other matters, he must do so by making the witness his own, and calling him, as such, in the subsequent progress of the cause." And he cites, in support of his text, the decision of the Supreme Court of the United States, as delivered by Justice Story, at the January term of that court, in 1840, in the case of the Philadelphia & Trenton Rail Road Co. v. Stimpson. 14 Peter's Reports, p. 461, which I hold in my hand and will now read to you.

Having read so much of Justice Story's decision in the case referred to, as I deem applicable to the question, I here leave the question.

Mr. Ricord. I have but to state, gentlemen, that though cross-examination is assumed as one test of truth, it does not follow from thence that I am obliged to make use of it as a test of the sincerity of the witness. Such was not my intention. My intention was to supply the deficiency of evidence elicited by the questions of my opponent. Of course I do not and shall not attempt to undervalue the decisions of Judge Story, but I equally rely upon the decisions of Great Britain as upon those of the United States. I do not admit that the decisions of the United States are paramount here over those of Great Britain, which Judge Story's decision does not even condescend to review and overturn upon principle. Besides, the decision of Judge Story goes upon the principle that my position is the received doctrine of the English law.

Mr. T. E. Where do you find that?

Mr. R. What I allude to is in Greenleaf, the author upon which Mr. Ten Eyck relies. "In England when a witness is called and sworn, the other party will, ordinarily, and in strictness be entitled to cross-examine him, though the party calling him does not choose to examine him in chief. In some of the American courts the same rule has been adopted." For these last Mr. Greenleaf gives us his authority: 7 Cowen, 238; and 2 Wendell, 166 and 483, New York

Reports. And these are the authorities relied on for the same rules as laid down by Messrs. Pain and Duer. They are in my favor. It is for yourselves, gentlemen, to consider which of those you will make your rule in this case.

By the Board. What objection have you to Judge Story?

Mr. R. I have none to Judge Story, nor have I any to Judges Mansfield, Kenyon, or Mr. Justice Butler. I very much question, however, whether the decision of the United States just quoted would be received in the courts of Great Britain without close examination. They are not wont to overturn the practice of ages so well considered without reason. But I take my stand upon the compact. It there says we shall be allowed full latitude, and I claim the same rule that was applied when Mr. Richards gave evidence. The decisions of the Supreme Court of the United States cannot vary our compact or the stipulated rights guaranteed under it.

By the Board. The compact says on none but legal grounds. Now, if Judge Story is to be taken as authority, then the evidence is illegal, and so we decide it to be.

Mr. R. But does that make it illegal according to the compact?

Mr. T. E. So far as the direct examination of witnesses is gone into, I will cheerfully agree with Mr. Ricord, that I shall examine, without any interruption, till I have got through, and then I will allow him to pursue the same course. I will not raise a single question.

Mr. R. That is all I contend for. At present witnesses who come from a distance are kept waiting whilst we discuss points of law.

Mr. T. E. The witnesses all reside in town, and cannot, possibly, come from a distance. My objection, and the one on which I have taken my stand, is, that by allowing this latitude upon the cross-examination, witnesses, which we introduce, are examined by Mr. Ricord, upon points which we have not touched; and, being called our witness, the evidence, if it is favorable to the other party, will be quoted against us with double force.

By the Board. Go on with your examination of the witnesses.

Mr. T. E. The Governor, who was on the stand when we left off last, is not present.

Mr. R. I think he has retired. I had examined him, and I believe I had no more questions to put to him.

*Mr. Lorrin Andrews was re-called to the stand.*

Mr. T. E. Did I understand correctly the other night that those papers which you brought with you were all you had in your court in relation to the judgment in favor of the Treasury Board against Ladd & Co.?

Mr. A. All that I know of—if any others exist they have been mislaid.

Mr. T. E. Do you know that all you received were there?

Mr. A. I suppose them to be all there.

Mr. T. E. Do you know such to be the case?

Mr. A. I do not know.

Mr. T. E. Had you ever examined them till the night you were here before?

Mr. A. The first time I examined them was on reading some copies which Mr. Ladd had made, and I assisted him in reading them to see if they were correct. That was the first time I looked them over.

Mr. T. E. Do you know whether all the papers you had at that time are here?

Mr. A. They have not been out of the court since.

Mr. T. E. Do you know whether the same papers are here now that were there at that time?

Mr. A. I believe so.

Mr. T. E. Do you know it of your own knowledge?

Mr. A. No. I believe they are. I have no evidence at all.

Mr. T. E. The question is whether you know the fact?

Mr. A. I know it negatively. I know no reason to think that any one has been abstracted.

Mr. T. E. That is not the question. You either know it, or do not know it. I suppose you mean to say you are morally certain?

Mr. A. They have been in the pigeon-holes —

Mr. T. E. I understand all about that. The question is, do you or do you not know it positively?

Mr. Ricord. The question is one of consciousness.

Mr. A. I am not omniscient nor omnipresent.

Mr. T. E. I want to know about your knowledge concerning that point?

Mr. A. I have every reason to believe that those are all the papers.

Mr. T. E. Do you know it?

Mr. A. If that is knowledge I know it.

Mr. T. E. Do you know it any other way?

Mr. A. I do not, for I have not had them in my hands all the while.

Mr. T. E. Do you know whether when you examined them before, that word "deputy" was interlined?

Mr. A. I do not. I forget whether when I read them with Mr. Ladd I held the original or copy in my hand. That word might have been there or not.

Mr. T. E. Do you recollect when Mr. Ladd was taking copies, whether this paper was copied by him? [Showing a paper.]

Mr. A. I do not. He took which he pleased.

Mr. T. E. Do you know whether this paper was? [Showing a paper.]

Mr. A. I do not. He copied what he liked, and I afterwards assisted him to read them.

Mr. T. E. Do you recollect if that interlineation was there?

Mr. A. I do not.

Mr. T. E. Do you know whose handwriting this is?

Mr. A. I do not.

Mr. T. E. Do you know whose handwriting the body of this is in?

Mr. A. I cannot see well enough at night to say. I do not know any one's handwriting that looks like that.

Mr. T. E. Is this signed by the same person that signed that?

Mr. A. I should think it was.

Mr. T. E. Who is that signed by?

Mr. A. By Thomas Pratt, sheriff, according to the signature.

Mr. T. E. Who is that signed by?

Mr. A. By Thomas Pratt.

Mr. T. E. But there is a *deputy* put in by somebody. Do you know whose handwriting that word is in?

Mr. A. I do not.

Mr. T. E. Do you know if these are the same papers, or if this one is a copy of that?

Mr. A. I do not.

Mr. T. E. I will state that those are copies, or one a copy of the other, except that one is signed by Thomas Pratt, sheriff, and the other deputy sheriff; and that one is dated on the 20th, and the other on the 21st of November; and also that the headings are different.

By the Board. Are they both amongst the original documents?

Mr. T. E. I suppose so, they are both in the file. Have any papers been added to that bundle, to your knowledge, since Mr. Ladd was there to copy them?

Mr. A. Not to my knowledge.

Mr. T. E. Are these the only records that you know any thing of in the court in regard to that affair?

Mr. A. They are.

#### *Cross-examined.*

Mr. Ricord. How long had Mr. Ladd those papers in his possession?

Mr. A. Do you mean at the court?

Mr. R. At the court?

Mr. A. He was writing there about two or three days—three or four, perhaps, I am not certain. He was in at different times to write.

Mr. R. Were you looking at him all the time?

Mr. A. No, he sat at one table and I sat at another, and he attended to his business and I to mine.

Mr. R. Would you be likely to notice whether he made any erasures?

Mr. A. I did not notice any thing of the kind.

Mr. R. Did you notice whether all the papers were there when you got them back?

Mr. A. I trusted to his honesty.

Mr. R. Do you know whether he added any papers?

Mr. A. I do not.

Mr. R. Would it be as likely for him to add or abstract any of those papers as for the other party to do so?

Mr. A. I have not allowed them to be in the hands of any person whom I had any suspicion of that he would abstract or interlineate.

Mr. R. Did you ever know me to complain of his having them, for fear of dishonesty or erasures?

Mr. A. Not that I know of, unless it was included at the time you lectured me about letting papers go out of court.

Mr. R. Was that upon the general principle?

Mr. A. Upon the general principle, I believe.

Mr. R. Did I know the fact that he had been copying them?

Mr. A. I believe you did.

Mr. R. And you say you did not hear me make that allusion to Mr. Ladd's honesty?

Mr. A. You possibly might. You might have made an allusion. You said it was unsafe or something of the kind to allow parties possession of papers. You were lecturing on the general subject, and that they might be abstracted or taken away or something of the kind, and that it was unsafe, and it was in connection with the fact that Mr. Ladd had been there copying papers.

*Direct Examination Resumed.*

Mr. T. E. Was that the time when he cautioned you about not letting him himself have them?

Mr. A. Yes, sir.

Mr. T. E. At the time when Mr. Ladd was copying papers, were there not other persons copying there too for Mr. Ricord?

Mr. A. Not for Mr. Ricord. There was a young man copying for me.

Mr. T. E. Those same papers?

Mr. A. No, sir.

Mr. T. E. Did you not furnish a copy of those papers to Mr. Ricord, at his request?

Mr. A. It is possible—I have forgotten. I had a good deal of copying done, and I have had a man employed to copy. I am not certain—I have not a very distinct recollection.

Mr. T. E. Was there not a Portuguese there that copied those papers—the whole of them?

Mr. A. No, sir.

Mr. T. E. A foreigner, then?

Mr. A. There was a foreigner copying. I do not know whether he was copying those papers.

Mr. T. E. Was there not a young man there copying those papers, for which he received \$7,00?

Mr. A. Yes. I do not know whether he was a Portuguese.

Mr. T. E. Do you recollect whether you furnished a copy to any body but Mr. Ladd?

Mr. A. I think not. I think I never furnished a copy to any body else in my life.

Mr. T. E. At the time Mr. Ladd was there copying, did you send for any of the papers to Mr. Ricord? Did you send Mr. Sea? Did not Mr. Sea come there with papers at the time, and was it not then that Mr. Ricord gave you the lecture?

Mr. A. I have no recollection about it—I was very busy with police cases. Such things might have been, but I was always busy.

Mr. T. E. Have you no recollection of Mr. Sea's coming down?

Mr. A. No; but it may have been so.

*Mr. Robert Boyd sworn by Mr. Hopkins.*

Mr. T. E. How long have you been in the Sandwich Islands?

Mr. B. About 24 years, that is, off and on.

Mr. T. E. Have you been the sheriff of this island at any time?

Mr. B. I was some time.

Mr. T. E. When?

Mr. B. In 1844 I was.

Mr. T. E. When were you appointed?—what was the date?

Mr. B. Somewhere about June, 1844. I am not very positive.

Mr. T. E. About that time?

Mr. B. Yes.

Mr. T. E. How long did you remain in office?

Mr. B. Till October, 1845.

Mr. T. E. Who made application to you to take the office of sheriff?

Mr. B. There was no application made.

Mr. T. E. To whom did you apply?

Mr. B. I applied to nobody, it was conferred on me by the Government.

Mr. T. E. Who do you mean by the Government?

Mr. B. I mean those at the head of the Government?

Mr. T. E. Who?

Mr. B. The Governor gave me the commission.

Mr. T. E. Were you never spoken to before the office was conferred on you by the Governor? No arrangement made about fees and all that?

Mr. B. Am I bound to answer such a question as that?



Mr. T. E. The arbitrators will tell you.

By the Board. Yes, we think you should answer.

Mr. B. Then am I to reveal my secrets?

By the Board. You are not bound to criminate yourself?

Mr. B. I don't mean to. Well, then, the office was conferred through the influence of a friend I acknowledge.

Mr. T. E. I want to know who that friend was?

Mr. B. I am sure it is nothing to his discredit—Dr. Judd.

Mr. T. E. Was any arrangement made between you and Dr. Judd in regard to the fees?

Mr. B. I suppose with the concurrence of the Governor the arrangement was made.

Mr. T. E. I said did Dr. Judd make it?

Mr. B. He did.

Mr. T. E. What was the arrangement?

Mr. B. That I was to receive the fees of the sheriff of Oahu.

Mr. T. E. Had you a compensation depending on the office—nothing else.

Mr. B. It was not dependent on the office of sheriff alone. I was to perform all those duties that would entitle me to that compensation.

Mr. T. E. What compensation?

Mr. B. Why, a dollar a day independent of fees.

Mr. T. E. Who made that arrangement with you?

Mr. B. Dr. Judd, sir.

Mr. T. E. How long did you hold office under that arrangement?

Mr. B. For a hundred days.

Mr. T. E. Was any other arrangement made at the end of the hundred days?

Mr. B. There was.

Mr. T. E. What was that?

Mr. B. That I should be dependent upon my office for remuneration as sheriff.

Mr. T. E. After the hundred days you were to depend entirely upon your office for compensation as sheriff. Who made that arrangement?

Mr. B. Dr. Judd.

Mr. T. E. At the end of a hundred days did you receive another appointment?

Mr. B. Yes, previous to their end.

Mr. T. E. What?

Mr. B. Prefect of Police and Inspector of Public Houses.

Mr. T. E. Who made the arrangement for your being made Prefect of Police?

Mr. B. For that I am also indebted to Dr. Judd.

Mr. T. E. What were you to get for that service?

Mr. B. One dollar per day.

Mr. T. E. Who made that arrangement?

Mr. B. Have I not mentioned before?

Mr. T. E. Dr. Judd?

Mr. B. Yes.

Mr. T. E. Previous to the time of the execution in favor of the Treasury Board against Ladd & Co., had you ever had any other executions put into your hands?

Mr. B. O, yes, sir, many of them.

Mr. T. E. Who gave you instructions as to the manner in which you should perform your duties in regard to those executions?

Mr. B. I received them from my friend, or rather benefactor.

Mr. T. E. Who was that?

Mr. B. Dr. Judd, sir.

Mr. T. E. What instructions did you receive from him or any body else about advertising the sales of property under those executions?

Mr. B. I will refer you to the returns I made to the Governor the Judge. You will find whether I did my duty or not.

Mr. T. E. I do not doubt that—I merely ask your custom in regard to advertising sales.

Mr. B. My custom was to advertise thirty days before the sale.

Mr. T. E. Did you get instructions from any one?

Mr. B. Why, being very deficient in knowledge, I was obliged to obtain it from those who knew better.

Mr. T. E. From Dr. Judd?

Mr. B. Why he was very kind, sir, to do it.

Mr. T. E. Were those advertisements usually put in the newspaper as well as stuck up in the streets?

Mr. B. The advertisements were not stuck up at all, they were put in the paper.

Mr. T. E. Usually put in the newspaper?

Mr. B. Yes.

Mr. T. E. Did you sell property at Koloa?

Mr. B. My deputy did, sir.

Mr. T. E. Did you advertise that sale?

Mr. B. It was advertised.

Mr. T. E. You think it was?

Mr. B. I refer you to the Polynesian.

Mr. T. E. I do not find it there.

Mr. B. I do not think that there was any necessity of an advertisement—not at the last sale.

Mr. T. E. The first sale?

Mr. B. That was advertised.

Mr. T. E. Are you sure? It is not in the paper.

Mr. B. Then it was placarded.

Mr. T. E. I wish you would be sure whether you advertised it?

B. If there is no advertisement in the Polynesian it could not been advertised; but if I sold it without advertisement I must done it with some authority. If it was illegal I leave it to those now better.

T. E. I was going to ask why it was not advertised?

B. Do you mean the last sale?

T. E. No, the first?

B. That property was included in the advertisement of Ladd's property here.

T. E. Answer me distinctly, Mr. Boyd.

B. I say I do not know then.

T. E. Who was the man that sold it?

B. His name was Pratt, I believe. A reference to the papers satisfy you on that head.

T. E. Can you tell me why the sale effected by Pratt was advertised?

B. Upon my word I cannot tell why it was not.

T. E. Do you recollect any instructions which were given?

B. I recollect instructing him to sell according to the instructions I received. By reference to the returns I made to court you find enough to satisfy you.

T. E. There is nothing there to show whether you advertised.

B. But there is something to show that the place was sold.

T. E. Now, I want to know why you did not advertise the property at Koloa? Do you know who probably gave you instructions?

B. I had instructions from my superiors.

T. E. Then if it was not advertised you received instructions to effect?

B. If it was not advertised I must have sold by some other means than my own accord you may depend upon it.

T. E. If you had received instructions not to advertise, who probably gave you those instructions?

B. I never received any instructions not to advertise—I received instructions to sell, I suppose.

T. E. Who gave you those instructions?

B. Why, the head of the office I held, I suppose.

T. E. Who was that?

B. Shall I always particularize the person, and say from the person through whose influence I was appointed?

T. E. Dr. Judd, then?

B. Yes.

T. E. Do you know Mr. Pratt's handwriting?

B. When I see it I can tell it.

Mr. T. E. Is this his signature?

Mr. B. Yes, that is his signature.

Mr. T. E. Did you ever know him in that capacity?

Mr. B. Not as sheriff—as deputy I knew him.

Mr. T. E. Did you file this paper in court?

Mr. B. Yes.

Mr. T. E. Was that interlined when you handed it into court?

Mr. B. I do not recollect.

Mr. T. E. Do you know the handwriting of the body of the paper of that?

Mr. B. I cannot tell without my glasses.

Mr. T. E. Can you tell enough to know whether that interlineation and the body of the paper are in the same handwriting?

Mr. B. I cannot without my spectacles.

Mr. T. E. I wish, Mr. Boyd, you would come here with your spectacles the next night we meet. Here is a paper, and there is another like it. I want to know which of these you returned into court, or whether you returned them both? I should like you to identify which of these you filed in court, or whether you filed both?

Mr. B. This document I received from Mr. Pratt, and this is my writing on it.

Mr. T. E. Do you know where you got that, or where it came from?

Mr. B. That possibly may have been forwarded to ——

Mr. T. E. Is this a copy of that, excepting in these two or three lines at top?

Mr. B. Is the wording different in those lines?

Mr. T. E. Yes.

Mr. B. This is the document that I filed.

Mr. T. E. Don't you know any thing about that?

Mr. B. I cannot say that I do.

Mr. T. E. Did you ever see it before?

Mr. B. I may have done so. This one I have seen. This one I received from Pratt—here is my writing.

Mr. T. E. At the time that you filed that, can you tell whether that interlineation was there or not?

Mr. B. It must have been there.

Mr. T. E. I want to know who made it?

Mr. B. I believe it is my own.

Mr. T. E. No mistake about it?

Mr. B. No.

Mr. T. E. You see that so well, cannot you tell this?

Mr. B. The paper is different. Black is more conspicuous on white than blue.

Mr. T. E. Who appointed Mr. Pratt deputy sheriff?

Mr. B. By the approval of the Governess of Kauai, I did.

Mr. T. E. You appointed him?

Mr. B. Yes.

Mr. T. E. At the time that you appointed Mr. Pratt deputy, did you appoint him and make out the commission before the Governess of Kauai had approved it?

Mr. B. I sent him the commission approved by the Governess of Kauai from here?

Mr. T. E. Did you go to the Governess to get the approval?

Mr. B. I believe I did. Yes, I took it myself.

Mr. T. E. Do you recollect when you made the levy on the property under the execution in Honolulu here?

Mr. B. I do.

Mr. T. E. At the time that you received an execution, what was your habit in regard to levying?

Mr. B. My habit was to levy upon what property belonged to the party against whom I had the execution.

Mr. T. E. Did you always note and make a return of what you had levied upon?

Mr. B. Of course.

Mr. T. E. You returned what you had levied upon?

Mr. B. Sometimes it may be enumerated, and sometimes blended, as in that instance.

Mr. T. E. Suppose you had levied on a real estate and personal property, and choses in action, would you have enumerated them?

Mr. B. I should have said, "Levied on the property." I did so, and do not know whether it was right or not.

Mr. T. E. Do you recollect what you levied upon under the execution here?

Mr. B. Yes. I levied upon the property of Ladd & Co. that was in the store, store-houses, and in the out-houses. The property known to belong to that firm, and conceded by them.

Mr. T. E. Do you mean the goods in the store?

Mr. B. The goods in the store, and all that was to be found about the premises.

Mr. T. E. Did you at that time levy upon the rents of those stores?

Mr. B. They were advertised for sale.

Mr. T. E. The rents were?

Mr. B. Yes.

Mr. T. E. I want to know whether you levied upon them that time or subsequently?

Mr. B. It must have been understood to have been subsequently. It was understood to be a common levy. I cannot say that the rent was included.

Mr. T. E. Did you make any inventory of what you levied upon?

Mr. B. I did.

Mr. T. E. Where is it?

Mr. B. In my pocket.

Mr. T. E. You did not file it then?

Mr. B. No. I was going to destroy it, but I fortunately kept it.

Mr. T. E. This then is the property you levied upon under the first execution?

Mr. B. Yes. It was at the termination of the sale of the other property that the rent was sold.

Mr. T. E. This is all the property I understand you levied upon at that time?

Mr. B. That is all the property I levied upon at that time, though the advertisement included the sale of the rent of the premises.

Mr. T. E. Will you make a proper return of this document and file it with Judge Andrews?

Mr. Ricord. I request you to file it with Judge Andrews; it belongs to his court.

Mr. T. E. Have you any papers besides these belonging to that affair?

Mr. Ricord. If you have I wish you would file them.

Mr. B. I believe I have the sale's account.

Mr. T. E. I wish it to be understood that this is an enumeration of the personal property levied upon—nothing is said of real estate. I wish that noted, so that nothing shall be said afterwards.

Mr. Ricord. This appears to be the paper which was missing, and which in the gentleman's estimate must have been stolen of course. It is a paper belonging to the Government, and ought to have been returned with the other documents. The fact of its having been missing, and the questions which have been put in consequence, have cost us fifty dollars each side.

Mr. T. E. I have made no imputation against the gentleman or any body else, I wish that understood. Mr. Ricord is always making up a mare's nest of his own. (To witness.) Do you remember when you made any levy on the rents?

Mr. B. It was on the 6th of December. It was included in the sale of that day as property that had been levied upon. It was included in the notice, which I supposed was sufficient.

Mr. T. E. You made a levy on certain personal property and made an inventory of it. Now, if you had levied upon the rents, would not you have put them in the inventory?

Mr. B. The return that I made will answer you.

Mr. T. E. But you made no return.

Mr. B. I did so, and levied upon the property by virtue of the warrant.

Mr. T. E. But I ask this question. Having levied upon the personal property, and having, as in duty bound, made an inventory of the property, if you had levied upon the rents would not you have included the rents?

r. B. If I had known I would have done it. It was for want of information.

r. T. E. Is it not this that you did not levy upon then.

r. B. Not at that precise time, but previous to the time of sales done.

r. T. E. At the time you made a levy you made an inventory.

r. B. You want to know whether I considered I had levied the rents. Well, I did not consider that I had levied upon the

r. T. E. That is all I want. Now then, when did you levy on rents, or did you ever make any levy?

r. B. O, yes, some time afterwards. Of course I considered execution which had authorized my levying upon all property of l & Co. gave me power to levy upon all I could find, and finding re I levied upon it.

r. T. E. When did you find it there?

r. B. Previous to the sale.

r. T. E. Who told you of it?

r. B. Perhaps I dreamt of it.

r. T. E. Do you mean to say you dreamt it?

r. B. I will not swear to it. I happened to drop upon it.

r. T. E. Mr. Boyd did not Dr. Judd or Mr. Ricord —

r. B. To those gentlemen I am indebted for every information I had.

r. T. E. One of them told you then —

r. Ricord. I can spare the necessity of this by saying that I tell him, and I hope to prove on cross-examination, that I told about the other matters.

r. Boyd. Well, I shall not be punished for what I have forgotten.

r. Ten Eyck. Have you any idea of what you did when you bed the rents. Did you ever make any minute of it any where?

r. B. The minute will be seen in my return.

r. T. E. I know about that return.

r. B. You will see that after selling, I gave them credit for 00.

r. T. E. Did you go through any form?

r. B. No, I conceived the first levy included all property, and if, afterwards, I found any other property, I should be justified levying upon it.

r. T. E. Were you in the habit, when you levied upon property, of notifying the owner that you had levied upon it?

r. B. Of course.

r. T. E. Well, how was that notice given?

r. B. In writing sir, I showed the warrant to Mr. Ladd.

Mr. T. E. Did he have a copy of it?

Mr. B. I believe so. If he asked for one he got it.

Mr. T. E. Did you advise him at any time, that you had levied on the rents?

Mr. B. I believe Mr. Hooper read from a long letter or document, of some kind.

Mr. T. E. What was the substance of it, was it objecting to the sale?

Mr. B. Something of the sort I believe, some people call it protest.

Mr. T. E. A thing very common here. Then Mr. Hooper read a protest against your selling the rents?

Mr. B. Yes, and required to be heard.

Mr. T. E. Do you remember the reason?

Mr. B. No sir, I did not pay much attention to it.

Mr. T. E. You were intent on selling and looking out for fees, I suppose. Do you recollect any thing about the substance of the protest?

Mr. Ricord. I would suggest that the protest be filed.

Mr. Ten Eyck. Do you recollect then the protest of Mr. Hooper against the sale?

Mr. B. Yes sir, something bordering on that.

By the Board. Is that protest not already filed?

Mr. Ricord. Very possible. I have a quantity of protests, enough to make a book, and most of them from Ladd & Co.

Mr. Ten Eyck. I believe the protest was verbal.

Mr. Boyd. There was a letter I think.

Mr. T. E. Did not Mr. Hooper read from a letter received from Europe, and notify the bystanders?

Mr. B. Yes sir, perhaps.

Mr. T. E. The time that you sold the property in Kauai personally, did you sell in April, 1845?

Mr. B. I do not know the time, in short, I do not recollect the month when I sold the Koloa estate.

Mr. T. E. Do you recollect under what process you sold that?

Mr. B. I believe, if I mistake not, under a warrant or execution.

Mr. T. E. Was it what is called a writ of *venditioni exponas*?

Mr. B. I will refer to Mr. Ricord to explain that term.

Mr. T. E. Do you recollect whether it was so called?

Mr. B. I believe it was, I believe such words were used, or such letters put together, as would convey such an appellation.

Mr. T. E. Who bought that property in, Mr. Boyd?

Mr. B. I did myself sir.

Mr. T. E. Had you instructions to do so?

Mr. B. I had not money enough to do so myself.

Mr. T. E. I did not ask you that, I asked you if you had any instructions to buy it in?



Mr. B. A friend advanced me the money and I bought it in.

Mr. T. E. Is that the same friend you have spoken of?

Mr. B. I do not know that I am bound to say his name, it is not well to tell when one confers a favor on you.

Mr. T. E. Who furnished you the means?

Mr. B. The Government—it was bought in for the Government.

Mr. T. E. Who furnished the money, or what do you mean by the Government?

Mr. B. I mean such as the King himself.

Mr. T. E. Did the King?

Mr. B. No, but one of his officers.

Mr. T. E. You know what I mean; did Mr. Ricord give you the money?

Mr. B. No.

Mr. T. E. Did Dr. Judd?

Mr. B. No.

Mr. T. E. Who did?

Mr. B. He gave me paper.

Mr. T. E. Who?

Mr. B. Dr. Judd.

Mr. T. E. What paper?

Mr. B. Papers as good as \$2600 00. You want to know the name of the person who gave the money?

Mr. T. E. Yes.

Mr. B. Why, Dr. Judd did?

Mr. T. E. You could have answered that a long while ago.

Mr. B. I do not know that I am correct in saying he gave me the money, for I had the means of paying. I mean that the execution was sufficient to pay.

Mr. T. E. Well, it is sufficient then, that the estate was purchased for the Government, and that it was settled through Dr. Judd.

Mr. B. I said he gave the money, but it was settled by my charging the Treasury Board with \$2,600 00, and giving Ladd & Co. credit.

Mr. T. E. Were your instructions from Dr. Judd to do so—who gave you your instructions?

Mr. B. My instructions I received from the head of the department.

Mr. T. E. Who?

Mr. B. The Governor is head.

Mr. T. E. Did he give you instructions?

Mr. B. He gave me instructions through other parties.

Mr. T. E. Who were the other parties?

Mr. B. I have told you before that Dr. Judd settled it, is not that sufficient?

Mr. T. E. Yes, it is quite sufficient. Now I will ask you another question. Did Dr. Judd instruct you to buy that in for the Government?

Mr. B. He did.

Mr. T. E. Did Dr. Judd, at the time he gave you instructions, give you any limits?

Mr. B. He certainly did.

Mr. T. E. What limits?

Mr. B. The limit of 5,000 00, and I should have been very glad to have sold it at that.

Mr. T. E. When were those instructions given to you?

Mr. B. It was given to me just I was going to Kauai.

Mr. T. E. Were they verbal or written?

Mr. B. Written sir.

Mr. T. E. Did you see them and read them before you went to Kauai?

Mr. B. I did not until we were just arrived at Kauai.

Mr. T. E. Why did you not read it before?

Mr. B. Perhaps I was obliged not to.

Mr. T. E. That is what I want to know. Were you obliged not to. Mr. Boyd, is this the fact that a sealed letter was placed in your hands, of instruction, and that you were not to open it till you got to Kauai?

Mr. B. I do not know that it was sealed, I was busy.

Mr. T. E. Were you instructed not to read it?

Mr. B. I cannot upon the oath I have sworn, tell whether I was or not.

Mr. T. E. But did you read it until you got to Kauai?

Mr. B. I did not. Whether I was told not to read it, or whether it was through forgetfulness; I did not read it till I got there.

Mr. T. E. Have you got through with that paper in your house?

Mr. B. I believe it is at home?

Mr. T. E. Will you be so kind as to bring it here the next meeting?

Mr. B. What! do you want me here again sir?

Mr. T. E. Not you but the letter.

Mr. B. Yes sir, I will send it.

Mr. T. E. What time did you leave here to go to Kauai?

Mr. B. What time. Do you mean what time of the day or month? It appears to me six or seven years ago.

Mr. T. E. Well, let me put you this question. How many days was it before the day of the sale that you did go from here?

Mr. B. That I cannot positively swear—I believe only one or two days—it was not long.

Mr. T. E. Did you give notice—did you let it be generally known in town that you were going down to sell that property?

Mr. B. Not verbally. Notice was given in writing and by advertisement.

Mr. T. E. Did you post advertisements?

Mr. B. No, when it was advertised in the papers, I saved myself the trouble of writing.

Mr. T. E. Did any one go down with you from here—I mean any citizen?

Mr. B. No sir.

Mr. T. E. Were you told by any one, not to let it be known that the vessel was going down?

Mr. B. No sir.

Mr. T. E. Were you applied to by Ladd & Co., two or three times, for information in regard to the property that was to be sold down there?

Mr. B. Yes sir, I believe twice, and I gave them as much information as I knew.

Mr. T. E. Were you advised by one what to write in reply to their letter?

Mr. B. I believe I in the first instance wrote in answer myself, and Mr. Hooper requiring a more definite reply, I believe Dr. Judd or Mr. Ricord dictated an answer.

Mr. T. E. Have you your commission, Mr. Boyd, as sheriff?

Mr. B. I resigned that.

Mr. T. E. Have you your commission?

Mr. B. No, I gave that up.

Mr. T. E. To whom?

Mr. B. To the party that granted it to me.

Mr. T. E. To the Governor?

Mr. B. Yes sir.

Mr. T. E. When did you do that?

Mr. B. Sometime after I resigned.

Mr. T. E. How long ago?

Mr. B. About 13 months ago.

Mr. T. E. At the time that you sent the commission to Mr. Pratt as your deputy, did you send him a letter of instructions?

Mr. B. I did.

Mr. T. E. Have you a copy?

Mr. B. I did not keep any copy.

Mr. T. E. Do you recollect what instructions you gave?

Mr. B. I gave him instructions to sell and post placards.

Mr. T. E. Do you recollect any particular instructions?

Mr. B. I instructed him what to do on receipt of the proceeds of the sale, that he was to forward the money up.

Mr. T. E. You don't recollect any particular instructions?

Mr. B. No sir.

Mr. T. E. Do you recollect if you filed a copy of that letter and

perhaps his reply to you at the time that you resigned your responsibilities as sheriff, your letter to Pratt, and his answer?

Mr. B. I am not certain about my letter; I remember filing his reply to me.

Mr. T. E. You are not sure about your letter to Pratt?

Mr. B. I cannot say that I did.

Mr. T. E. Have you got your receipt which the court gave you on your final discharge?

Mr. B. Yes sir.

Mr. T. E. Have you it with you?

Mr. B. Yes sir, this is it.

Mr. T. E. Have you any other receipts than this, Mr. Boyd?

Mr. B. I have a receipt from the present sheriff, or rather marshal. It seems Mr. Sea has it.

Mr. T. E. Were you you advised by any person not to give more publicity than was absolutely necessary to the last sale at Kauai?

Mr. B. I certainly was not, sir.

Mr. T. E. Do you recollect when the bill of sale on the property at Kauai was dated?

Mr. B. No sir, I do not.

Mr. T. E. Do you recollect when you sold—what date?

Mr. B. I believe it was the 28th of April.

Mr. T. E. And the bill of sale is dated the 7th of June; can you state any reason why it was delayed?

Mr. B. The reason is the same as in many cases before. Perhaps at the time the party did not think of demanding a receipt, and finally called for one. I remember it was some time after the sale of the rent of Ladd & Co.'s premises that I gave Dr. Wood a receipt.

Mr. T. E. Then you do not know any reason. Who attended the last sale at Kauai?

Mr. B. Many persons; Mr. Burnham, Mr. Toby, John Hobbs, and others.

Mr. T. E. Did any body bid?

Mr. B. Yes sir, Mr. Burnham and Mr. Toby.

Mr. T. E. Did you advise any body before the sale, that you were authorized to give \$5,000 for it?

Mr. B. No sir, I never mentioned it to any body till very lately.

Mr. Ricord. I suppose I shall have the right to cross-examine the witness when we meet again. I should wish to know? I make this observation because the direct examination has gone out of the issue altogether. The object of the examination of a witness, I thought, was to prove the extent of Dr. Judd's commission by his acts. It seems to have traveled out of that, and I shall have probably forgotten its entire drift before we next meet.

By the Board. How long shall you want?

Mr. Ricord. Perhaps two or three hours, but I would prefer deferring my cross-examination, if you so judge proper, till we next meet. Have I the floor when we meet again?

By the Board. Certainly.

The Court then adjourned till Tuesday, the 1st of December, at 7 o'clock P. M.

#### NINETEENTH DAY.

The Board met according to adjournment, at 7 o'clock, P. M.

*Mr. Robert Boyd re-called to the stand.*

Mr. Ten Eyck. Before Mr. Boyd shall be cross-examined I should like to put two or three more questions.

Mr. Ricord. I have no objection.

Mr. T. E. I wish to ask Mr. Boyd, now he has got his glasses, if he can tell whose handwriting that interlineation is in?

Mr. B. That is Mr. Pratt's writing, sir.

Mr. T. E. The whole of it? Is that Pratt's?

Mr. B. Yes, sir, the whole of it?

Mr. T. E. The body of the paper too?

Mr. B. Yes, sir.

Mr. T. E. That entire paper then is Pratt's writing, and the interlineation?

Mr. B. Yes, sir.

Mr. T. E. Can you tell whether that is yours? You said you thought it was the other night.

Mr. B. That (deputy) is not my writing.

Mr. T. E. You said the other night it was.

Mr. B. It was hardly perceptible then.

Mr. T. E. Do you know whose it is?

Mr. B. It is Pratt's himself. I think so—I cannot swear to it. I recollect of the document having been presented in that way—whether he did it himself or any body else I do not know.

Mr. T. E. It was in when you received it?

Mr. B. Yes, sir, I recollect that. You wanted the other night to see a letter from Dr. Judd, here it is. [See Doc. Y. 2—App.]

Mr. T. E. Mr. Boyd, the last evening we were here you said you appointed Mr. Pratt, with the approval of the Governess of Kauai, and sent him the commission with her approval, and that you went yourself to get that approval. I wish you to state where you got that approval of the Governess?

Mr. B. In this village, sir.

Mr. T. E. Will you tell me when—about what time?

Mr. B. I had the very document in my hand just before I left the house, and now I do not recollect the time precisely.

Mr. T. E. Do you recollect whether it was before the property was sold at Kauai by Pratt?

Mr. B. It was, sir. I have got the commission in my possession, the original signed by Kekauonohi. I did intend to have brought it down this evening.

Mr. T. E. Do you recollect when Mr. Pratt sold that property?

Mr. B. A reference to the papers would satisfy you on that head.

Mr. T. E. Was it not on the 9th of December, 1844?

Mr. B. I believe it was three days after Ladd & Co.'s effects here, which would make it the 9th of December. I am not positive whether it was sold on that day, but it was advertised for that day.

Mr. T. E. Now, then, I wish you to recollect. You say you obtained that approval from the Governess in this village previous to the sale—how long previous?

Mr. B. It was sent down by the vessel that took down his instructions.

Mr. T. E. About how long previous to that sale?

Mr. B. It may have been three or four days.

Mr. T. E. You obtained it you think two or three days before the sale. I want to know if you know how long?

Mr. B. I say probably three or four days.

Mr. T. E. Now, sir, do you undertake to speak positively about that, that you got the approval here in this village about the 9th of December?

Mr. B. I have told you that I thought so.

Mr. T. E. Will you swear that the Governess was here in this village a week before that sale?

Mr. B. I will swear that she was when she signed that commission.

Mr. T. E. That is not what I want to get at. I want to know if she was here within a week of the time that sale took place, which was the 9th of December?

Mr. B. She must have been here. I am sure that she was, or otherwise she could not have signed it.

Mr. T. E. That is the very reason for my asking the question. Will you look at that paper?

Mr. B. I see my signature there.

Mr. T. E. Will you tell me whether that paper was in that state when you handed it to Mr. Ladd and got his signature to it?

Mr. B. When I handed it to Mr. Ladd? I never handed Mr. Ladd any such document. He did not receive it from me—I never handed it to him. I had several such papers attached to the premises, but it is not in my knowledge how Ladd & Co.'s signature comes here. These dates were given to be more correct. I wrote in this manner originally.

Mr. T. E. I want to know who altered that?

Mr. B. I want to know that myself.

Mr. T. E. Who altered it?

Mr. B. That (in the body of the instrument) is in Dr. Judd's handwriting. It appears it was not correctly expressed, and he made the alteration. I do not know any thing about the signature.

Mr. T. E. Do you know whether that signature was there when the alteration was made?

Mr. B. I am certain it was not. I do not know how this came here. These papers were all made to be posted—there were more of them put into Mr. Ladd's hands. This is one that has been altered by the Dr. and more correctly worded, and I made the rest like it correct.

Mr. T. E. Then at the time that alteration was made, Ladd & Co.'s name was not there?

Mr. B. I should not have added Ladd & Co.'s name.

Mr. T. E. Do you not remember presenting a paper like that to Mr. Ladd in his counting-room and asking him to sign it?

Mr. B. I do not remember any thing of the kind.

Mr. T. E. But do you remember that when it was altered Ladd & Co.'s signature was not upon it?

Mr. B. I do not remember to have seen the signature on any of those papers, nor on this one.

*Cross-examined.*

Mr. Ricord. I have a few questions to ask you Mr. Boyd. They are within the field of the direct examination. I do not propose to make Mr. Boyd my witness, nor have I made any others. I do not conceive that I am yet on the floor in the defence, but simply to elicit what has been left unelicited by my opponent. Mr. Boyd, was Dr. Judd the only minister of the King in 1844 when you took office?

Mr. B. You mean this to test my knowledge, I suppose?

Mr. R. Yes. I ask you that question.

Mr. B. I believe not.

Mr. R. Who else was?

Mr. B. I should think you were.

Mr. R. Had you been informed at that date of the office I held?

Mr. B. I understood you to be Attorney General.

Mr. R. And as such, what did you understand my powers to be?

Mr. B. Your powers?

Mr. R. My powers? What did you understand them to be?

Mr. B. It is almost impossible for me to define that.

Mr. R. Were they something or nothing?

Mr. B. They certainly must have been something. That you would advise the King, as his law adviser, to do all that was legal, I suppose.

Mr. R. Had I any thing to do with his officers?

Mr. B. I certainly considered myself your subordinate.

Mr. R. How did you consider me in regard to Dr. Judd at that time?

Mr. B. Why, perhaps, you would be better ——

Mr. R. I want to get your impressions.

Mr. B. You mean your position compared with Dr. Judd's—which was the highest?

Mr. R. Was Dr. Judd every thing and I nothing?

Mr. B. To answer that question sincerely I should say that you were something.

Mr. R. Did not Dr. Judd, from the first, refer you for directions in regard to your sheriff's duties to me.

Mr. B. That he did directly refer me to you for directions in regard to my duty as sheriff, I will not positively swear; but this I know, that all instructions were derived from Mr. Ricord. I thought so at least.

Mr. R. Had you not frequent conversations with the Governor of Oahu yourself in regard to your sheriff's duty?

Mr. B. Very limited, owing to this obstacle, that I could not converse well in native, not having made sufficient progress in the language, and the Governor did not know English.

Mr. R. Did you conceive yourself at liberty to go to the Governor without the intervention of Dr. Judd or any one else?

Mr. B. If I could have made myself understood I would have gone directly, but I had to depend on Dr. Judd's kindness to translate, otherwise I should not have troubled Dr. Judd so much as I have.

Mr. R. Did you deem it imperative upon you, as sheriff, to take Dr. Judd's instructions, or did you receive it from him as friendly advice?

Mr. B. I took it for friendly advice in regard to my duties.

Mr. R. Did not you consider yourself at liberty to discharge your duty as sheriff upon your own responsibility, without consulting any body?

Mr. B. No, sir, I was not sufficiently acquainted with the duty.

Mr. R. But were you responsible enough? Did you consider yourself a free agent enough to discharge those duties without consulting any body?

Mr. B. If I had chosen to do so I was able.

Mr. R. If you had chosen to do so?

Mr. B. I have since been thinking that I could. I have learnt something by this investigation, you see.

Mr. R. Had you given bond to the Governor for the faithful performance of your duty as sheriff?

Mr. B. I did, sir, to execute all mandates.

Mr. R. Who else did you resort to in 1844 and 1845 for advice besides Dr. Judd?



Mr. B. To yourself.

Mr. R. Who besides Dr. Judd and me? Any body else?

Mr. B. The Governor, I suppose; but then I had to depend on Dr. Judd's interpretation.

Mr. R. Were you in office after Judge Andrews' appointment?

Mr. B. A short time.

Mr. R. How long?

Mr. B. I have a very poor memory. At all events till September. He came to be Judge —

Mr. R. What was the date of your resignation?

Mr. B. That I do not recollect—it was in October, I believe.

Mr. R. When was Judge Andrews appointed?

Mr. B. In August, I think.

Mr. R. Did you after August, 1845, deem it your duty to be governed by his judicial orders?

Mr. B. Yes, instead of the Governor.

Mr. R. Did you then go to him for advice?

Mr. B. I had no occasion, there was very little doing; but if there had been I should have gone to him.

Mr. R. When you say you were advised how to act by Dr. Judd, was it as sheriff or as inspector of public houses?

Mr. B. Sometimes as sheriff, sometimes as prefect of police, and sometimes as inspector of public houses.

Mr. R. What was the nature of the advice you spoke about? Was it merely friendly advice, or was it mandatory?

Mr. B. Why it was generally friendly advice, telling me how to do that which I did not know how to do.

Mr. R. 'Telling you how to do it, but advising?

Mr. B. Yes.

Mr. R. Did the one dollar per day arrangement with Dr. Judd constitute you a clerk and copyist during the first hundred days?

Mr. B. It did. I was to aid in writing, and in the way that I could make myself serviceable.

Mr. R. Did not you solicit extra employment in consequence of the sheriff's office given you by the Governor not being adequate to your support? Was that the reason, or was it not?

Mr. B. I never so much as insinuated an inclination for it.

Mr. R. I mean something to occupy your time. Did the sheriff's office fill up your time? Did you get a dollar a day for extra services?

Mr. B. I got it as prefect of police.

Mr. R. Were you ever called upon by Dr. Judd to copy papers for him?

Mr. B. During the first hundred days, or during my first acquaintance with Dr. Judd, I copied several papers—several sheets.

Mr. R. Did you do miscellaneous business for him?

Mr. B. Not much in that way, sir.

Mr. R. Was that copying any part of your sheriff's business?

Mr. B. Certainly not—I did not consider it so.

Mr. R. Did you get the sheriff's fees for the sheriff's duties, besides the one dollar a day?

Mr. B. After the one hundred days.

Mr. R. How during the one hundred days?

Mr. B. During that time I was to receive one dollar a day whether the sheriff's fees amounted to that or not. At the end of a hundred days, if it did not amount to that, I was to receive a hundred dollars; and if it amounted to five thousand dollars, I was to get the five thousand dollars.

Mr. R. What was the object of that arrangement? Was it not that the sheriff's business was very precarious, and you stipulated that your receipts should be at least one dollar a day?

Mr. B. I did not stipulate, but it was stipulated.

Mr. R. Was it mostly foreign or native business, the sheriff's business at that time?

Mr. B. Mostly native as sheriff. I suppose as much native as foreign.

Mr. R. Had you occasion to serve any writs for Ladd & Co. during your term of office? Had you occasion to serve writs for them, not against them?

Mr. B. Not to my knowledge.

Mr. R. Do you think a native could have been found to supply your place as sheriff during your time; attending to the writs, and doing them up as they should be done?

Mr. B. I am afraid I should be flattering myself to say I do not think so; but to speak sincerely, I do not think there could.

Mr. R. Could the Governor speak English?

Mr. B. A smattering of English.

Mr. R. How much?

Mr. B. I suppose I shall have to refer to fractions. I will say about the thousandth part of what he ought to have done.

Mr. R. Could he, in your judgment, have made a suitable selection amongst foreigners of a man to discharge your duties without consulting with some foreigner better acquainted with them than himself?

Mr. B. I do not think he could, sir.

Mr. R. Could the Governor have made choice of some foreigner to do the duties of sheriff without consulting with some other foreigner?

Mr. B. I say again he could not.

Mr. R. You mentioned some writs, Mr. Boyd, that you served on Ladd & Co. before the affair of the Treasury Board. What writs were those?

Mr. B. Before the Treasury Board?

Mr. R. Before the Treasury Board affair?

Mr. B. I did not say so.

Mr. R. I thought you did. What writs did you serve?

Mr. B. The first were in favor of the Treasury Board.

Mr. R. What writs did you serve on any body before?

Mr. B. On any body before? All those are to be found with my returns made to the judge.

Mr. R. How many do you suppose did you return?

Mr. B. I suppose I have got some 150 receipts from the judges of the inferior court.

Mr. R. Did you levy on property for them?

Mr. B. I did.

Mr. R. Did you ever sell?

Mr. B. I did not. Before the expiration of the thirty days they paid up. Conner was one, and one was against Walker, I remember.

Mr. R. Who signed the writs that you generally served?

Mr. B. Governor Kekuanaoa.

Mr. R. In his own handwriting?

Mr. B. Always in his own handwriting.

Mr. R. Did not I generally draw up the Governor's writs and processes in the English language, and have them translated by the sworn interpreter?

Mr. B. I always supposed so.

Mr. R. Did you know it? Have you seen it?

Mr. B. I have seen it in several cases—those of importance.

Mr. R. How long ago? Was it in 1844?

Mr. B. Yes, in 1844. But they were not handed me directly by you.

Mr. R. They had to be translated into native and to receive the Governor's signature, and then be handed to you. Did the Governor sometimes hand them to you, and Dr. Judd sometimes?

Mr. B. I believe the Governor, excepting very rarely, handed them to me. They generally came through you or Dr. Judd.

Mr. R. Would you have served a writ if it had not been signed by the Governor?

Mr. B. Certainly not, I should not have done so. I should have made inquiries, at all events, why the Governor did not sign—I should have been so presumptuous as that.

Mr. R. Should you have thought it was lacking something?

Mr. B. I should certainly have thought it was lacking his signature?

Mr. R. Suppose it had been signed by somebody else? Suppose I had signed it?

Mr. B. Then I should have known that the Governor did not sign it.

Mr. R. Are you at all acquainted with the sheriff's duties in any place besides these islands?

Mr. B. You wish me to expose myself.

Mr. R. I want to know whether you understand the duties of sheriff elsewhere?

Mr. B. I am sure I never dreamt of being sheriff.

Mr. R. I ask whether you know what in New Zealand or any where else the sheriff has to do?

Mr. B. I have some faint recollection of a marshal—a member of our family was marshal once.

Mr. R. Where?

Mr. B. In a particular part of the world, but it was not in New Zealand.

Mr. R. Where was it?

Mr. B. Why, in one of the British colonies, but not in New South Wales.

Mr. R. I would like to know whether this marshal had his attorney—whether he was in the habit of taking legal advice?

Mr. B. He was himself a lawyer and acquainted with all he had to do, and had no occasion to depend on any one for advice.

Mr. R. Have you ever known such an officer to take legal advice?

Mr. B. I cannot say that I ever knew that. I cannot say against it or for it.

Mr. R. I would like to know whether, had you been disposed to take legal advice, you could have taken advice here? Whether there are lawyers you could have applied to in Honolulu as counsel?

Mr. B. There was none beside yourself at that time.

Mr. R. Where then did you resort to? Where did you go for advice?

Mr. B. I went to Dr. Judd in all cases.

Mr. R. Why?

Mr. B. For advice.

Mr. R. When in Koloa?

Mr. B. Do you mean the plantation I visited some time ago on the island of Kauai?

Mr. R. Not on the island of Oahu.

Mr. B. Perhaps I may be mistaken, but I think not.

Mr. R. I want to know whether advertising a sale in Oahu of property situated on Kauai, would satisfy the law?

Mr. B. I should suppose so from the parties executing it. I had such dependence on their knowledge.

Mr. R. If you advertised here property to be sold on Kauai, would it satisfy the law?

Mr. B. I should conclude so, or I should not have been advised to do so.

Mr. R. Are you sure that you did do it, or that you were advised to do it?

Mr. B. I did issue this advertisement.

Mr. R. When were they stuck up on this island or Kauai?

Mr. B. Perhaps in the Polynesian. At least there is a printed one here, and I believe it was taken out of the Polynesian.

Mr. R. Was there a newspaper on Kauai in 1844?

Mr. B. I never heard of such a thing, and I never saw one.

Mr. R. Do you know whether there was none?

Mr. Ten Eyck. There was none—we admit that.

Mr. R. I was asking about a newspaper. Mr. Ten Eyck has put questions that I consider as foolish as this one to be in itself. This is a link of reasoning. I am going to reason this case out.

Mr. B. There was none to my knowledge.

Mr. R. How were advertisements of property upon sheriff's sales made when there was not any paper?

Mr. B. Printed bills were sent out.

Mr. R. Always printed?

Mr. B. Yes, sir, always. Yes, I believe they were printed. I sent printed bills down to the deputy sheriff there to post.

Mr. R. Do you know how the law requires the advertisement of property under execution to be made?

Mr. B. I have forgot.

Mr. R. Is there any thing in the laws of the Hawaiian Islands in regard to the advertising of sales?

Mr. B. I have read something in the laws of the Hawaiian Islands about advertising.

Mr. R. Will you be pleased to point it out? Before I go any farther, I may say that I mean advertisements about co-partnerships, &c. There is something about selling, but not about sheriff's selling, for there is nothing about sheriffs to be found here. Mr. Ten Eyck did not notice, perhaps, that the Governor is at liberty to appoint officers when necessary. That we will reason out afterwards. Do you find any thing about advertising sales?

Mr. B. No, sir, I have not sufficiently read this book.

Mr. R. I thought you would know it if it were there, having been sheriff.

Mr. B. It is true there are many things I ought to know that I do not know.

Mr. R. You said in the direct examination, that if the Koloa property was not advertised in the Polynesian, it could not have been advertised at all.

Mr. B. Well, that is almost logic.

Mr. R. If it was not advertised in the Polynesian—that is what you said.

Mr. B. Perhaps I left out Polynesian.

Mr. R. No, you said if it was not advertised in the Polynesian——

Mr. B. I ought to have left out Polynesian.

Mr. R. You meant that if it was not advertised it could not have been advertised?

Mr. B. Exactly, sir.

Mr. R. Do you recollect, Mr. Boyd, consulting with me and getting directions from me in regard to the sales at Koloa?

Mr. B. I do certainly recollect—I have got drafts in my possession now.

Mr. R. That show that you did consult me?

Mr. B. I do not recollect having applied to Mr. Ricord personally, but I have been sent to him.

Mr. R. Do you recollect ever to have seen the notice that was given by the King and Governor of my appointment, and directing all executive officers to consult with me and nobody else? Did you see that notice in the Friend before you took office?

Mr. B. I do not recollect having seen any thing of it. I do not doubt, however, but what it is so. It is easily proved if there is such a notice.

Mr. R. Do you not recollect receiving from me the directions you gave your deputy, Mr. Pratt, at Koloa, and in writing?

Mr. B. That it came from you I cannot gainsay; but I cannot say positively that I received it from you. That it came from you I have not the least doubt. You are right, sir, I have that in your own writing. You are right, sir.

Mr. R. Do you not recollect my instructions to have the notices posted by Mr. Pratt?

Mr. T. E. Well, that is in writing, and I should like to have it introduced.

Mr. B. When I went to Koloa I had a written notice taken round the morning of the sale.

Mr. T. E. Which sale do you speak of—your sale or Pratt's?

Mr. B. My sale—the last sale.

Mr. T. E. Well now, with regard to the other. The other you say was sent down to Mr. Pratt in handbills.

Mr. R. Do you not recollect, Mr. Boyd, coming to my office in Kanaana immediately on your return from Koloa, and reporting your transactions to me? Do you remember the circumstance?

Mr. B. I do, sir.

Mr. R. When you filed your papers with the judge, did you file them *en masse*, loose ones and originals, and Mr. Deputy Pratt's altogether—the mass of papers?

Mr. B. Yes, sir, the mass of papers.

Mr. R. When was that?

Mr. B. It was not long after my return from Koloa.

Mr. R. Not long after your return from Koloa. Was not that the way you came to file informal and redundant duplicates of the Koloa levy?

Mr. B. That seems to be the way how there came to be two.

Mr. R. I should like you to look again. Just look again and re-collect how you came to file this mass of papers.

Mr. B. This is a sale of mortgage and mortgaged property.

Mr. R. How came you to file this?

Mr. B. This is Pratt's inventory.

Mr. R. And this one is an inventory sent to himself. The one he says is a schedule, and the other gives the grounds upon which he levied or attached. Have you got no more loose and redundant copies?

Mr. B. No, sir.

Mr. T. E. I think one is called an attachment and the other a levy.

Mr. B. No, this is a schedule.

Mr. T. E. This is a schedule, is it?

Mr. B. This gives an account of the property he attached.

Mr. R. How did you understand that word attached?

Mr. B. Why, by virtue of instructions he received from me, he attached that property.

Mr. R. Did you understand levying by that?

Mr. B. Attached or levied, you could best explain that. Pratt, as deputy sheriff, returns it as attached.

Mr. R. Would people have considered those terms as synonymous?

Mr. B. I believe they are synonymously used.

Mr. R. On surrendering your archives to your successor, Mr. Sea, (in 1845 I believe it was) did you give him a heap of papers *en masse*?

Mr. B. I did give him papers *en masse*.

Mr. R. Were they authentic or unauthentic?

Mr. B. Those I thought worthy of reserving I gave him.

Mr. R. You did not give them up to him as authentic originals?

Mr. B. No, sir.

Mr. R. Is this not probably the way you account for the way in which half a dozen schedules have come into the hands of the court?

Mr. T. E. Only two.

Mr. B. Probably it is.

Mr. R. I wish to know if that is the natural way in which incongruous papers have come before the court here, papers not agreeing in date, or in handwriting, or in nomenclature? It seems it was on the day of attachment or levy he wrote this. This one is the day after—it is the schedule, as he terms it, of what he has exposed for sale. (To the witness.) If there had been six or eight of these made on different days, would you have returned them?

Mr. B. If there had been a necessity, I suppose I would.

Mr. R. I mean in giving up your archives, would you have given them all up to your successor?

Mr. B. No sir.

Mr. R. Let me ask the question a little differently. When you gave up your archives to your successor, did you look through them to see there were none but original documents in the bundle you gave him. Did you look carefully to see that there were no stray papers, no old letters of your own?

Mr. B. I think I did, I think I handed no others than those I ought to have done. At all events, his receipt will prove what the papers were I handed him.

Mr. R. Have you his receipt?

Mr. B. I have.

Mr. R. Have you it here?

Mr. B. Not here, but I brought it here the other night.

Mr. R. I would like you to bring it here to see whether all the papers are here.

Mr. B. I believe Mr. Ten Eyck compared them and found them all to have been here.

Mr. Ten Eyck. I compared all those relating to this case. There was a letter you wrote to Pratt and his answer missing, those were all, I believe. No he had delivered them over to Mr. Sea, that was it.

By the Board. Those have not been shown.

Mr. Ten Eyck. Mr Sea has them, so the receipt stated.

Mr. Ricord. Did I not draw up your own appointment of Pratt as deputy sheriff of Kauai, for the approval of the Governess? Do you remember that circumstance?

Mr. B. That you drew it up, I have not the least doubt, but it was not in your writing. I have not got it here.

Mr. R. Do you remember the handwriting it is in?

Mr. Ten Eyck. I think it had better be produced if you are going to swear to any handwriting.

Mr. Boyd. Well, I had better produce it.

Mr. Ricord. Yes, you had better produce it.

Mr. B. I suppose if I send it to the Governor that will do?

Mr. Ten Eyck. Or to the arbitrators. [Doc. Y—Appendix.]

Mr. Ricord. Do you recollect the levy on Ladd & Co.'s property, in Honolulu?

Mr. Boyd. Yes sir.

Mr. R. When was that?

Mr. B. In November, I believe.

Mr. R. In November of what year.

Mr. B. Some time in November, 1844, or else the latter part of October.

Mr. R. Do you remember the incident connected with that levy?

Mr. B. No more than that I had a warrant placed in my hands, and was ordered to go and levy.



Mr. R. Do you recollect what transpired, how you acted?

Mr. B. Yes, I recollect having received a warrant or execution.

Mr. R. What did you do?

Mr. B. I had it in my possession for a day before I was ordered to use it.

Mr. R. Who ordered you. Do you recollect any body telling you to go ahead?

Mr. B. Yes.

Mr. R. Who was that person. Do you recollect my agency in that matter?

Mr. B. By Mr. Ricord and Dr. Judd, I was told by one of those two to go ahead, I am not certain whether it was Mr. Ricord or Dr. Judd.

Mr. R. What did you do when you went down on the day of levying?

Mr. B. I saw Mr. Ladd and felt rather delicate about it; I told him what was to be, he said there is what you see. He made out a protest against it.

Mr. R. What time of the day was it?

Mr. B. Is it not noted in the execution?

Mr. R. It may be, but I want you to carry your memory back to the day of levying.

Mr. B. If I mistake not, it was about noon.

Mr. R. How long did you stop there and let them retail goods to the natives and others after you had levied?

Mr. B. I did not know that any goods were retailed at that store after I had levied. I heard that it was the case, but I did not believe it.

Mr. R. Do you recollect my coming down there about 4 o'clock?

Mr. B. I remember that you told me so, and that you had had the store shut up.

Mr. R. Who was acting, were you in person?

Mr. B. You seemed to have acted for me when you did so.

Mr. R. Who was acting for you?

Mr. B. No one, I did not suppose that any parties would take any thing from the store, I depended upon their honor.

Mr. R. Who shut the door?

Mr. B. You told me you did sir.

Mr. R. Who got the key?

Mr. B. I am not certain whether I got the key from you or whether I went down to Mr. McClurg and got it.

Mr. R. Do you recollect posting a notice on the door of the store?

Mr. B. Yes sir.

Mr. R. What was that notice?

Mr. B. What I term an attachment.

Mr. R. How did it read?

Mr. B. Why, it read similar to the document that was here brought forward, with the correction.

Mr. R. Something like that was it?

Mr. B. Yes sir, it was written according to the correction.

Mr. R. Where was this placed?

Mr. B. It was placed on the door of the dry goods store and one on the gate-way.

Mr. R. What was the meaning of that, Mr. Boyd?

Mr. B. I understood it was in order to levy upon the goods and property of Ladd & Co.

Mr. R. What property of Ladd & Co., the premises, the whole premises?

Mr. B. Why, it would include the premises by putting the paper upon the premises. I should think so. There was none put on the part occupied by the consulate, I did not know whether I ought to have put any there.

Mr. R. Do you recollect giving any excuse to me at that time for allowing the store to remain open and Mr. Gilman to remain behind the counter selling?

Mr. B. I do not recollect any excuse, for I do not know that there was any selling.

Mr. R. Did you see any kanakas in there?

Mr. B. I saw some, but I did not know they were purchasing.

Mr. R. How came you to omit filing the list of Ladd & Co.'s property in the court, the list brought here the other night?

Mr. B. I did not know that it was necessary.

Mr. R. Is it necessary?

Mr. B. Since it has been demanded it must be necessary.

Mr. R. You think that conclusive?

Mr. B. At all events, when I made my return, those to whom I made it, might have said it was necessary, but as no notice was taken of it, I thought it was not necessary.

Mr. R. Did you ever file one before?

Mr. B. No sir.

Mr. R. Did you ever know one to be filed?

Mr. B. No sir.

Mr. R. Did not you levy on the 1st of November, 1844, on the buildings as well as on the goods in the store, and did you not post a written notice on the store-door to that effect?

Mr. B. No, I cannot say positively that I understood the premises were levied upon, but the property.

Mr. R. Not specified?

Mr. B. No.

Mr. R. May it please the arbitrators, I would like here to call for the letter read by Mr. Hooper on that occasion. The existence

of that letter was elicited by the other party the last day we met, and I would like to have it filed. It is material to the defence, it is a letter from Mr. Brinsmade to Mr. Hooper.

Mr. Ten Eyck. There was nothing said about the contents of the letter, we merely asked if he made a protest, and if he read any thing from a letter.

Mr. Ricord. You say Mr. Boyd, that Dr. Judd gave you a paper when you went to Koloa to sell the estate, authorizing you to bid in behalf of the Treasury Board?

Mr. B. He did sir.

Mr. R. Have you got that paper?

Mr. B. Yes sir.

Mr. R. I wish it introduced by the other party. Papers spoken of ought to be made part of the record, I believe that is consistent with the rules of law.

Mr. Ten Eyck. I do not object to your introducing it, but I do not wish to father it myself. [Doc. Y 2—Appendix.]

Mr. Ricord. (After reading the letter in question.) When you returned from Koaloa, Mr. Boyd, after the sale at which you bid and reported to me what you had done, did I not express my regret that the property had been knocked off to the Government for \$3,600 00; do you recollect that circumstance?

Mr. B. I cannot say positively that you did express any regret. You may have done so.

Mr. R. Who did you over-bid when you bid \$3,600?

Mr. B. Mr. Toby, I believe.

Mr. R. Who was Mr. Toby bidding for?

Mr. B. Heaven knows.

Mr. R. Did you tell me who he was bidding for?

Mr. B. I told you who I supposed he was bidding for; I told you I supposed he was bidding for Dr. Wood, I do not mean to say he was bidding for Dr. Wood.

Mr. R. How much did he bid?

Mr. B. I believe I quieted him by bidding fifty dollars over him. I hoped he would go higher.

Mr. R. What was your object in bidding, to run the property up?

Mr. B. Yes, that it should not go for too little money.

Mr. R. Do you recollect why I said I wish it had been knocked off to Dr. Wood?

Mr. B. No sir, I do not recollect.

Mr. Ten Eyck. These are all opinions.

Mr. Ricord. They are facts. There are things that happened two years ago, they cannot have happened during the suit. (To witness.) Did Dr. Judd not express his regret—I mean at that time, not since, that you had struck it off at \$3,600 00?

Mr. Boyd. He expressed his regret that it fell to the lot of the Treasury Board to purchase.

Mr. R. Will you state what the bid was that you made, what was the bid for which it was knocked off?

Mr. B. \$3,600 00.

Mr. R. Whose bid was that?

Mr. B. Mine.

Mr. R. You stated something about a sealed letter?

Mr. B. That is the letter that I thought was sealed.

Mr. R. This is the letter. [Doc. Y 2—Appendix.]

Mr. B. Yes. It was not sealed, as you will perceive, then. I believe I observed then, that I was not positive whether it was sealed or not.

Mr. R. Are you positive that Mr. Pratt did not post notices of the sale at Koloa?

Mr. B. I am not positive that he did not, I should rather be positive that he did, because he was instructed by me to do so.

Mr. Ten Eyck. Which sale have you reference to?

Mr. Ricord. The first. Did I not draw up for you, the instructions for Pratt, with regard to the first sale at Koloa, and posting the notices?

Mr. Boyd. I believe you did.

Mr. R. Who acted on the occasion of your final discharge when you surrendered your archives to the sheriff, Mr. Sea.

Mr. B. To you I am grateful for that kindness.

Mr. R. Did I not make out your account of vouchers and your receipt from the new sheriff and your exonerator from Judge Andrews?

Mr. B. You did sir; you dictated it at all events.

Mr. R. Did I not draw up for you a bill of sale for the Koloa property?

Mr. B. You did sir.

Mr. R. Was not the settlement of John Bernard's property at Hanalaei wholly transacted by me?

Mr. B. Wholly sir.

Mr. R. When was that?

Mr. B. Some time in May, 1845, I believe, I am not certain.

Mr. R. Who made out your instructions in this case?

Mr. B. You did sir.

Mr. R. Who did you report to in that case?

Mr. Ten Eyck. I have no objections to this, but I have asked no question about that case.

Mr. Ricord. The field of inquiry has been the agency of Dr. Judd, through 1844 and 1845. I want to show that his exclusive agency is not exclusive unless it is exclusive of himself, in regard to the transactions of Mr. Boyd. (To witness.) Who had the record of judgment?

Mr. Ten Eyck. I must object.

Mr. Ricord. Then I withdraw the question. I come back to a question in connection with the surrender of the archives of Mr. Boyd. Was there any residue of the funds of Mr. Bernard when you surrendered your archives.

Mr. Boyd. There was.

Mr. R. Who did you pay it over to?

Mr. B. To the Judge.

Mr. R. Who did you count it out to?

Mr. B. To you at your office.

Mr. R. You passed it through me?

Mr. B. I did, I believe you asked me to hand it to the judge.

Mr. R. Was it not your custom to consult me almost daily from the day of your appointment in 1844, to the day of your discharge, in 1845?

Mr. B. Not at first, but latterly, because you observed, that on all money business, I might go to Dr. Judd, but that on all law business, you would do the needful.

Mr. R. Did not Mr. Judd refer you to me for advice very frequently?

Mr. B. He frequently told me to apply to you for information that I needed.

Mr. R. Did he not inform you that he could only advise you as a friend?

Mr. B. I always understood that he did it in no other way, but he did not inform me that his advice was merely friendly, he had no occasion.

Mr. R. Did he not tell you he was not official?

Mr. B. I understood it to be friendly, but that he told me so I cannot say. That would be out of the path of truth.

Mr. R. When did you return to the Islands.

Mr. B. On the 19th of April, 1844, I landed at Lahaina, on Maui, and on the 19th of May, I found myself in Honolulu.

Mr. R. Did you see the King or any of the chiefs at Lahaina?

Mr. B. It was some time after I landed that I saw the King.

Mr. R. Was it before you came here?

Mr. B. Yes.

Mr. R. Did you express your wish to any one there, to have employment here?

Mr. B. I wrote to some one here, intimating that if I could find employment, I should be very glad to visit Honolulu.

Mr. R. Did you see the King?

Mr. B. I saw him, but I did not have any conversation with him about employment. He only asked me if I meant to remain.

Mr. R. Mr. Boyd, did you bring any letters to Mr. Judd on the subject of his procuring employment for you?

Mr. B. I know a friend that wrote Dr. Judd about me, but it was not till afterwards that he told me about it.

Mr. R. Who was that friend?

Mr. B. John G. Munn.

Mr. R. Did not Dr. Judd tell you that the King had requested him to find employment for you?

Mr. B. No sir.

Mr. R. Dr. Judd did not tell you that? Did you not understand it so?

Mr. B. No sir, but I am not the less obliged to the King if he did.

Mr. R. I would like to know whether you instructed Mr. deputy Pratt to advertise and sell the non-mortgaged property of Ladd & Co.?

Mr. B. I did sir.

Mr. R. And the mortgaged?

Mr. B. The mortgaged and unmortgaged.

Mr. R. That was the first sale?

Mr. B. The first sale by Pratt at Koloa.

Mr. R. Was it necessary, in your professional judgment, to advertise the sale on any other Island than that in which the property was situated? Was it necessary for you to advertise here if the property was situated on Kauai that you were going to sell?

Mr. B. To advertise here. It might be done, though the property was on Kauai.

Mr. R. Was it necessary?

Mr. B. Not necessary in my judgment.

Mr. R. Do you know of any law that requires property to be advertised?

Mr. B. Yes, I believe there is a law that requires property to be advertised, at thirty days, I believe.

Mr. R. Can you find it? (handing book of old laws.)

Mr. B. By hunting sometimes, I may.

Mr. R. I have hunted without being able to find it.

Mr. B. Perhaps it is not the same book?

Mr. R. The same book—the old law book. I do not know of any other, and I should like Mr. Boyd to point it out. Mr. Boyd has given evidence with regard to advertising, and thinks he can find a law on that subject.

Mr. B. I believe you will find it there.

Mr. R. This is a law respecting debtors That has nothing to do with executions.

Mr. B. I thought it had.

Mr. R. Read the law, it does not say any thing about advertising?

Mr. B. I thought it was necessary to advertise thirty days be-

fore the sale, as in the case of the brig Euphemia. The party wanted to have the business done in less time.

Mr. R. You said on your direct examination, that Dr. Judd gave you a letter when you went to Koloa. Why did he give it to you?

Mr. B. As an authority to bid.

Mr. R. Was there any other object?

Mr. B. I do not know of any other object.

Mr. R. Did he say why he wanted you to bid?

Mr. B. Nothing more than is contained in the letter, that he was afraid the bidders would be intimidated, and he authorized me to bid the sum specified.

Mr. R. Was that the letter spoken of that you were not to open?

Mr. B. He never told me not to open it. I received it unsealed, but I did not open it until I got there.

Mr. R. There was so much mystery about that letter that I began to feel a little alarmed. Did not Mr. Hooper complain to you that the property would be sacrificed?

Mr. B. No, sir, he made no complaint to me.

Mr. R. Did he complain to any body in town so as to induce that letter? Did you ever hear it said in town that the property was going to be sacrificed?

Mr. B. No, sir. I do not know whether I might —

Mr. R. I would like to know how high you would have run up the property?

Mr. B. I would have gone as far as \$5,000 at all events, and gladly.

Mr. R. Did Ladd & Co. make any objections to you when you sold the rents of the property in Honolulu?

Mr. B. The objection made was reading a passage from a letter, I do not know who it was from. The sale continued nevertheless.

Mr. R. You say Mr. Ladd did not make the objection, but Mr. Hooper?

Mr. B. Yes, Mr. Hooper.

Mr. R. Did Mr. Ladd speak to Mr. Hooper and stop his objection?

Mr. B. I do not recollect that he did.

Mr. R. You do not recollect. Who was the letter from, do you recollect?

Mr. B. Why, it was rumored to be from Mr. Brinsmade, but I cannot say that it was.

Mr. R. I would like very much to have that letter filed, it has been so often alluded to on the other side that it seems to be almost an integral part of this case in relation to the estate at Koloa and the rents here.

By the Board. We do not recollect that that letter was alluded to.

Mr. R. Yes, it was alluded to by Mr. Ten Eyck; he said there was a protest and letter.

Mr. T. E. I beg pardon, it came out that there was a protest and part of a letter read.

Mr. R. Do you hold any claims on Ladd & Co.?

Mr. T. E. I object to the question and insist upon its not being put down, because it is a matter I have not alluded to, and has no relevancy to the case.

Mr. R. It has to do with the witness. You said that if in the course of cross-examination it appeared that the witness ——

Mr. T. E. Then you ought to have questioned him at first.

Mr. B. I have no claims, or none to my knowledge.

Mr. T. E. I wish it to be noted that this is not to be taken.

Mr. R. If the arbitrators are going to take that notice, I would like to debate the point whether I have not a right to go into questions with regard to the witness' interest. It goes to the favor. I deprecate the argument, because it will take up time and spread more matter upon the record. I look upon it as a frivolous objection; but if it is not to be argued, I wish it to be noted upon the record that I am not allowed to elicit such information in the course of cross-examination as may show the witness' interest. Mr. Boyd, have you been spoken to by either Mr. Ladd, Mr. Hooper, Mr. Brinsmade, or Mr. Ten Eyck upon the subject of your testimony, before you came here the other day as a witness? Did any of them speak to you beforehand?

Mr. B. Certainly they did.

Mr. R. To what effect?

Mr. B. Merely touching my recollection in certain cases.

Mr. R. Which of them was it that talked to you?

Mr. B. Mr. Ladd.

Mr. R. What particular points did he call your attention to?

Mr. B. Nothing tending to the disadvantage of the parties. What questions he put I answered as far as I knew. I was not under oath at the time, and it was not a legal inquiry. In short I do not recollect.

Mr. R. Where was this?

Mr. B. In a room.

Mr. R. Where did he converse with you?

Mr. B. The first of my seeing him was in the street.

Mr. R. What did he ask you?

Mr. B. I cannot recollect.

Mr. R. Did he try at all to train you into any particular way of testifying?

Mr. B. I am rather too old.

Mr. R. I suppose so. I asked whether he made the attempt?

Mr. B. No, sir. He only asked me if I recollected such and such things; if I did I told him so, and if I did not I answered him in the negative.

Mr. R. With regard to the few questions that were asked you here *this evening* about the Governess of Kauai, where did she reside here?



Mr. B. She resided opposite the Governor's, by the road leading up to Dr. Judd's.

Mr. R. There is a carpenter's shop there, is there not?

Mr. B. Yes, a carpenter's shop opposite.

Mr. R. How long has she been here?

Mr. B. I do not know.

Mr. R. Do you know if she has been back to Kauai since 1844?

Mr. B. I do not know.

Mr. R. Were you in the land commission court two weeks ago when the Governess of Kauai was there defending that case of Mrs. Sea's?

Mr. B. No, sir. I was there a week ago to-day—she was not there then.

*Direct Examination Resumed.*

Mr. T. E. One moment, if you please. In regard to this matter of the Governess of Kauai, did you ever get her signature to a paper more than once?

Mr. B. Yes, in the case of Bernard. Only once for Messrs. Ladd & Co. I had occasion to appoint a new deputy in the case of Bernard.

Mr. T. E. You only got her signature once, and that was in the case of her approval of your deputy?

Mr. B. Yes.

Mr. T. E. Did not you get her signature to your own authority to sell the property when you went yourself?

Mr. B. No, sir. I say no, but I am not certain. There may be something amongst those papers. If I had such a document it must be there, for that I would not omit to file.

Mr. T. E. I do not know whether it is on this one.

Mr. B. Yes, here it is.

Mr. T. E. Can you read it?

Mr. B. Yes, I can understand that much of native. It says I approve of Robert Boyd's acting —

Mr. T. E. Will you interpret Judge Andrews?

Judge Andrews (interpreting). I consent to Robert Boyd or his deputy to do those things (that is the above things) on the island of Kauai?

Mr. T. E. This is the execution under which you sold. Then you did get her signature to another paper. I understood you to say you never got it but once?

Mr. B. I did say so; but then I said also that if you found it amongst those papers —

Mr. T. E. Now, was not this the paper you got her approval of in this village, instead of getting her approval of Pratt as your deputy? Where was she when she signed this paper?

Mr. B. At her house.

Mr. T. E. Where was she when she signed the other?

Mr. B. She might have been there too.

Mr. T. E. Was she in the village?

Mr. B. I never went out of the village for her signature.

Mr. T. E. Did you get her to sign the approval of Mr. Pratt?

Mr. B. I did.

Mr. T. E. You are positively sure that you got her to sign her approval of Mr. Pratt? I want to know whether you got the Governess to sign the approval of the appointment to sell the property on the 9th of November? I want you to answer that question.

Mr. B. I will not answer that question. I tell you she approved of it.

Mr. T. E. I want to get at this. Where was it done?

Mr. B. I do not know.

Mr. T. E. Do you know when it was done?

Mr. B. I do not.

Mr. T. E. That is all. Are you sure, Mr. Boyd, that you got yourself the Governess of Kauai to sign this paper which you have just looked at? That you went and procured it yourself?

Mr. B. I tell you that I do not recollect that I did. I know the paper was signed and approved of, and that is all.

Mr. T. E. That is just what I have been trying to find out all the evening. You said you went yourself?

Mr. B. I went for one myself, but both are by the Governess signed.

Mr. T. E. There is no doubt about that, that is evident to our senses. Have you got the commission that you gave Pratt?

Mr. B. I have got it.

Mr. T. E. With you?

Mr. B. Not with me.

Mr. T. E. Will you be so kind as to send it to the arbitrators?

Mr. B. I will, sir.

Mr. T. E. Now, Mr. Boyd, will you be positive that at the time when you sent the commission down the Governess' signature was upon it?

Mr. B. I am positive of it.

Mr. T. E. You are?

Mr. B. Yes.

Mr. T. E. How long before you sent that commission to Pratt was it made out by you?

Mr. B. The commission sent to Pratt?

Mr. T. E. Yes. How many days before you sent it down did you make it out for him?

Mr. B. I do not recollect.

Mr. T. E. Well, about how many, to the best of your recollection?

Mr. B. Some time before, of course.

Mr. T. E. Well, how long?

Mr. B. The opportunity may have occurred a day or two afterwards.

Mr. T. E. You think about a day or two?

Mr. B. Possibly—I do not recollect any thing about it.

Mr. T. E. Do you suppose it was more than a week?

Mr. B. I do not think it was, sir.

Mr. T. E. You do not think it was over a week. Did you make it out yourself here?

Mr. B. What, the commission?

Mr. T. E. Yes.

Mr. B. I believe I did.

Mr. T. E. Did you give it to any one before you sent it to Pratt, or did you place it any body's possession before you sent it to Pratt?

Mr. B. No. I believe I put it under cover and sent it.

Mr. T. E. I mean was it out of your hands from the time you made it out till you sent it down?

Mr. B. I believe not, excepting perhaps the master of the vessel that was to take it. He had it sometime before he sailed.

Mr. T. E. Before you put it in his hands it had not been out of your hands?

Mr. B. Not that I recollect of.

Mr. T. E. This was in December, 1844?

Mr. B. I believe it was, sir.

Mr. T. E. Did I understand you that after you had made out the commission it was not out of your hands until you placed it in the hands of the captain to carry it to Kauai?

Mr. B. You understood right, sir.

Mr. T. E. And you are sure that when you sent it, it had this approval upon it?

Mr. B. Positive of that.

Mr. T. E. When did you receive the returns from Pratt of his proceedings under that execution?

Mr. B. By the first vessel that left Kauai afterwards. I do not recollect the exact time, but a reference to those papers may satisfy you.

Mr. Ricord. Do you know who brought them?

Mr. B. They came in an envelope from Pratt.

Mr. T. E. By whom?

Mr. B. By the master of a vessel that brought them to the Honolulu House at all events.

Mr. T. E. When did you attach or levy on the property in Kauai that Pratt sold?

Mr. B. Not till it was done by Pratt?

Mr. T. E. How long before the 9th of December was that?

Mr. B. It might have been a week before.

Mr. T. E. Was that property sold by virtue of the execution under which you sold the property here?

Mr. B. It was to be sold by virtue of the first execution.

Mr. T. E. Mr. Boyd, you were asked by Mr. Ricord whether you supposed that an advertisement here, for property situated on Kauai, would fulfil the requirements of the law, and you answered that you were so advised, did you not?

Mr. B. That I was so advised.

Mr. T. E. Yes, you said that you supposed that an advertisement here of property situated on Kauai, would fulfil the requirement of the law, and said that you thought it could be done and that it would be legal, and you said you were so advised. Why did you advertise the property which you sold yourself in the Polynesian, and not the property which Pratt sold?

Mr. B. Because I thought it was best to attend to it myself. Pratt was laboring under a fit of sickness —

Mr. T. E. I ask why you advertised the property which you sold, and not that which Pratt sold?

Mr. B. There was advertised for sale all Ladd's property under the first execution.

Mr. T. E. When and where? When was it to be sold?

Mr. B. When it was most convenient, I suppose; and it was sold.

Mr. T. E. Did not you advertise the property to be sold here in Honolulu?

Mr. B. Yes.

Mr. T. E. Did you advertise at the same time that to be sold at Kauai?

Mr. B. All Ladd & Co.'s property was considered under attachment.

Mr. T. E. Were you the sheriff?

Mr. B. Yes.

Mr. T. E. Of which island?

Mr. B. Of Oahu.

Mr. T. E. Mr. Boyd, did you ever levy on the property at Kauai under the first execution?

Mr. B. It was levied upon under my instructions to my deputy.

Mr. T. E. In December?

Mr. B. In December or some other month.

Mr. T. E. Did you ever advertise in the Polynesian, or any other paper, the property that Pratt sold?

Mr. B. There was a handbill.

Mr. T. E. I ask whether you advertised the property which you sold there in the Polynesian newspaper?

Mr. B. I believe not.

Mr. T. E. Did you every levy upon it?

Mr. B. I do not recollect. The documents will prove what I have done. That is all I have to refer you to.

Mr. T. E. Unfortunately the documents prove nothing.

Mr. Ricord. We will discuss that by and by.

Mr. T. E. Did I understand you correctly to say, that you understood the words attached and levied upon to mean the same thing?

Mr. B. I stated so.

Mr. T. E. Have you ever served any attachments?

Mr. B. I do not pretend to be any way well versed in all these terms.

Mr. T. E. Have you never made any distinction in your business between attaching and levying on property on execution?

Mr. B. I cannot say I have. An attachment was to attach and to levy on a man's property to sell it.

Mr. T. E. Do I understand that you never served attachment in contra-distinction to levying?

Mr. B. I have attached property.

Mr. T. E. You mean that you attach under an execution?

Mr. B. Exactly so.

Mr. T. E. With regard to the schedule of the property, did you file the original?

Mr. B. I filed the one with my handwriting on the back of it.

Mr. T. E. Did you ever have another copy of it made by yourself?

Mr. B. There was another copy. It was made to be attached to the deed of sale of the Koloa estate.

Mr. T. E. Where is that bill of sale?

Mr. B. With the parties to whom I gave it I suppose.

Mr. T. E. Have you ever seen it since?

Mr. B. No, sir.

Mr. T. E. Do you know what became of it? Is there any place where they record those things?

Mr. B. There is none.

Mr. Ricord. I would ask you one question. Had you not an authorization from the Governess of Kauai to appoint and instruct a deputy on Kauai?

Mr. B. Undoubtedly I had, the original of which I have promised to send to the arbitrators to-morrow.

Mr. T. E. Have you, Mr. Boyd, filed the paper you promised to file?

Mr. Ricord. He is to do so. He has instructions from me to do so.

By the Board. Did we understand you, Mr. Ten Eyck, that you did not wish these copies which have been made from the records, filed in the Court of Oahu?

Mr. T. E. No, gentlemen, we do not want them, because we

have certified copies of them. I do not desire them myself, for I do not want to impose the additional expense of paying for them on Ladd & Co.

*Mr. John Ricord, Registrar of Conveyances and Notary Public, sworn by Mr. Hopkins.*

Mr. Brinsmade. Are you the keeper of the register?

Mr. Ricord. I am registrar of the Hawaiian Islands.

Mr. B. Is this the book of registry?

Mr. R. This is not the book of registry. This is a book anterior to the present system of registering, but it was kept, *con amore*, when there was no law on the subject, under an appointment I had from the Governor to be Registrar for the Island of Oahu. It is now a book of record in the registry office, under the law which says that all books deposited there, under certain conditions, shall be authentic. The Governor's commission says:

To JOHN RICORD, Esq., an Hawaiian subject.

You are hereby appointed specially to act as Notary Public in and for the village of Honolulu, in the island of Oahu, of which the undersigned is constitutional Governor, to act as such Notary until my further pleasure, and until the enactment of specific laws for regulation and appointment of Notaries Public.

Given under my hand and seal at Honolulu, this 28th day of Oct., 1844.

[L. S.] (Signed,) M. KEKUANA OA.

It was signed by Kekuanaoa and given for specific purposes.

Mr. Ten Eyck. Under that authority then you recorded these papers, and they are now a part of the records?

Mr. R. Yes, sir.

Mr. Brinsmade. Will you show me the record of the bill of sale made by Mr. Boyd, as sheriff, to Mr. Burnham? Sale made on the 9th of December.

Mr. Ricord showed the record in question, at page 37 of the record book 1st, and the schedule attached to it at page 39. Mr. Ricord then showed, at the request of the same party, the second bill of sale at page 55 of the same book, and the schedule annexed at page 55 also.

Mr. Ladd. The handwriting of these interlineations appears to be that of Dr. Judd.

Mr. Ricord. No, they are in the handwriting of Mr. Gray, my clerk at that time.

Mr. Ladd. Is this the only book?

Mr. Ricord. This is the only book that was kept at that time. There are several books since.

Mr. Brinsmade drew attention to the erasures on pages 37 and 38.

Mr. Ricord. They were made before my signature.

Mr. Brinsmade. The object in calling for this book was to ascertain whether the schedule which has been returned by the sheriff to this court, was the same as this one attached to the bill of sale, and I find that the description of the property is the same, though the heading is different. The same property that was sold on the 9th of December, 1844, and conveyed to Mr. Burnham by the sheriff, is precisely the same as was again sold on the 28th of April, and conveyed to the Treasury Board, though the heading of the property sold on the 28th of April is different from the heading of the same property levied upon on the 21st of November, and sold on the 9th of December. That is all the difference there is, and there is no original in the court corresponding to that inventory.

Mr. Ricord. I would like to say that I do not know that there is no corresponding original. I do not know that circumstance.

Mr. Brinsmade. There is none brought here.

Mr. Ricord. But there may be one in some of the other bundles.

Mr. Brinsmade. I go upon the testimony of Judge Andrews which he has sworn to. It may be that it is in the court, or it may be that Mr. Boyd has it.

The court then adjourned till Thursday, the 3d inst., at 3 o'clock, P. M.

#### TWENTIETH DAY.

Mr. G. D. Gilman sworn as interpreter, by Mr. Hopkins.

*M. Kekauonohu, Governess of Kauai, sworn to give evidence, by Mr. Hopkins.*

Mr. Ten Eyck. Mr. Gilman, will you ask the Governess when she was commissioned Governess of Kauai?

Mr. Gilman interpreted to the Governess.

Mr. Ten Eyck. I will state a circumstance by which she may be able to recall the time. You recollect there was a feast on the 1st July, 1844?

Mr. Gilman. It was before that she says, she thinks it was in 1842, perhaps, she thinks she has been Governess five years, that is her reply.

Mr. T. E. Will you ask her if she was actually appointed Governess of Kauai until 1844? She was undoubtedly entitled to the place before, but I want to know whether she got any commission from the King before that time?

Mr. G. She says she cannot say. Her commission is at Kauai.

Mr. Ricord. The records of the legislature will show that. The King does not appoint, the legislature do that.

Mr. Ten Eyck. Will you ask her where she was during month of November, 1844, or two years ago last month. Whether she was on this Island or Kauai?

Mr. Gilman. She says she was sometimes on this Island and sometimes on Kauai. She wants to know the month that Governor Adams died. She rather thinks she was in Kauai in November, 1844.

Mr. T. E. Will you ask if, in November, 1844, she authorized Thomas Pratt to act as sheriff, under her authority as Governess of Kauai?

Mr. G. She and Dr. Judd appointed him.

Mr. T. E. In November?

Mr. G. She says she cannot recollect certainly.

Mr. T. E. What, does she say that she and Judd appointed him sheriff of the Island?

Mr. Ricord. So fair as Dr. Judd's name goes this is fair enough, but it seems to me that this evidence about the execution and the levy comes under another point. They have gone on the principle of dividing their claims, and there is one claim for selling the property under the execution, which will come up by and by. What shows Dr. Judd's acts I have no objection to.

Mr. Ten Eyck. Before she and Dr. Judd appointed Pratt, had she commissioned Pratt, herself, to be sheriff of that Island?

Mr. Gilman. She says that was the first. My question was, "was the appointment you and Dr. Judd made, the first one you gave to Pratt," and she said it was the first one.

Mr. T. E. Was it the only appointment she ever made to Pratt?

Mr. G. The only one.

Mr. T. E. Ask her, if you please, if she appointed Pratt sheriff of that Island, or deputy of Robert Boyd, sheriff of this Island?

Mr. G. She says she knew nothing about his acting under Boyd. She says he was appointed sheriff.

Mr. T. E. Will you ask her who it was that requested her to commission Pratt as sheriff of that Island?

Mr. G. She says Dr. Judd and John Li. (Members of the Treasury Board.)

Mr. T. E. Where was she, or where was Dr. Judd and John Li, when they requested her to make that appointment?

Mr. G. At Hanalei or Kauai.

Mr. T. E. Does she not recollect of commissioning Boyd to sell the property of Ladd & Co. down at Kauai?

Mr. G. She says she gave one for Bernard, or the man at Hanalei, by which she means Bernard.

Mr. T. E. Did she give him no commission to sell Ladd & Co.'s property?

Mr. G. She does not remember.

Mr. T. E. Will you ask her why she signed the commission appointing Pratt sheriff of Kauai, at the request of Dr. Judd—what was the reason she appointed him at Dr. Judd's request?

Mr. Ricord. Put the other with him if you will.



Mr. Ten Eyck. Well, Dr. Judd and John li?

Mr. Gilman. She says owing to my ignorance of the English language, and as it was a business concerning foreigners, I consented to the request made by Dr. Judd and John li, that he should be sheriff.

Mr. T. E. By whose advice particularly, did she make that appointment? By Dr. Judd or John li?

Mr. G. She says they both had about as much to say, one as the other. She consented to their request and gave the appointment.

Mr. T. E. Did Dr. Judd or John li show to her, at that time, any writing or any thing from the King, to induce her to make that appointment?

Mr. G. No.

Mr. T. E. Ask her if you please, in what light she and the natives, generally, have looked upon Dr. Judd as connected with the Government whether they considered that he was what they call the 'aupuni.'

Mr. G. She asks you if you mean all the Government?

Mr. T. E. Whether he has been considered as a general agent of the Government?

Mr. Ricord. Be careful how you interpret Mr. Gilman.

Mr. G. I shall say the man who does the most work.

By the Board. Mr. Gilman has been sworn to interpret correctly and undoubtedly he will be conscientious.

Mr. Ricord. I demur to its being put down as general agent, if Mr. Gilman puts the question that way.

By the Board. The man who does most work would not express it Mr. Gilman.

Mr. Gilman. The way I can put it, is the most responsible man, the man who does most work. She says, we the chiefs gave our consent that Dr. Judd should do the work. We were ignorant and awkward, and chose him to do our business.

By the Board. Does she mean native business or business with foreigners?

Mr. Gilman. She made no distinction.

Mr. Ricord. I would observe that where there are questions of this difficult kind, there is always likely to be a misunderstanding.

By the Board. But Mr. Gilman perfectly understands the English language, and he also understands the idea which is wished to be conveyed.

Mr. Ricord. But she does not understand the idea, perhaps they have no word that will convey it. I do not impeach your integrity at all Mr. Gilman.

Mr. Ten Eyck. In all business matters connected with foreigners so far as she has any acquaintance with them, has Dr. Judd been the business agent in doing that business?

Mr. Gilman. She wants to know at the time first talked about, and I replied from that time to this, and now she wants the question to be repeated.

Mr. T. E. Whether in all business of foreigners with the Government, Dr. Judd has been the business man to do it?

Mr. G. I asked her, as far as you know about Government matters, has Dr. Judd been the man to do business between natives and foreigners?

Mr. T. E. Will you ask her if you please, who was the judge or the person who presided as judge in courts of Kauai, when she was acting as Governess. I mean wherever the seat of her Government was, I suppose it was at Hanalaei?

Mr. G. I happened to know that there was one judge at Hanalaei and another at Koloa.

Mr. T. E. Ask her then, who was judge at Kauai?

Mr. G. She asks if you mean in foreign cases?

Mr. T. E. Yes.

Mr. G. James Young.

Mr. T. E. Where was he located?

Mr. G. At Koloa.

Mr. T. E. Ask if she knows any thing about how business was conducted. It is no matter, however. Ask her if you please, Mr. Gilman, whether foreigners have ever applied to her to transact business with her, and if they have, whether she has referred them to Dr. Judd?

Mr. G. She says do you mean the foreigners at Kauai?

Mr. T. E. Yes.

Mr. G. She says no.

Mr. T. E. Have they done so here?

Mr. G. She asks at the present time?

Mr. T. E. No, latterly, within the last year.

Mr. G. No sir, she has done no work this year.

Mr. T. E. Well, at any time since she has been Governess, have foreigners applied to her to transact business with her, and if they have, has she referred them to Dr. Judd?

Mr. G. She says when I was on Kauai, I did my own business as Governess, but while here, when there was any thing of difficulty, I told them to go to Dr. Judd.

*Cross-examined.*

Mr. Ricord. I should like to ask a few questions now and I should like to suspend myself for a further examination of the Governess afterwards. Will you ask her if you please, who appointed her as Governess?

Mr. Gilman. The King.

Mr. R. Had the legislature any thing to do with it?

Mr. G. She says it was done at the parliament.

Mr. R. Will you ask her whether they keep a book in the parliament?

Mr. G. She wants to know what kind of book?

Mr. R. A book of proceedings.

Mr. G. Yes.

Mr. R. (To the arbitrators.) Have you got those papers that have been introduced here in evidence. I mean the one that was handed in this afternoon; it was handed in by Mr. Boyd. Will the Governess say whether she signed that paper? (The paper in question, which the arbitrators handed to Mr. Ricord, was the appointment of Mr. Pratt approved by the Governess of Kauai, on the back of the original execution, directed by the Governor of Oahu, to Mr. Boyd, sheriff of Oahu.)

Mr. G. Yes.

Mr. R. Will you ask her where she was when she signed it?

Mr. G. She says perhaps it was done here, she cannot say certainly.

Mr. R. Does she know whether she was here at that time?

Mr. G. She says it is not plain to her where she was at that time. She wanted to know what the paper was, shall I explain to her?

Mr. R. Yes, that it was the writ to levy upon Ladd & Co.'s property.

Mr. G. She says it was signed at Hanalei.

Mr. R. Does she remember who presented it to her to be signed?

Mr. G. John Ii and Dr. Judd.

Mr. Ten Eyck. This paper was connected with Mr. Boyd's testimony. If it had been here at that time, we should have given it in evidence.

Mr. Ricord. I thought he was to hand it in?

Mr. Ten Eyck. Yes, but he has handed it in to the arbitrators. I have no objection to its going with his testimony.

Mr. Ricord. She says that John Ii and Dr. Judd requested the appointment—does she mean this?

Mr. G. She asks is this Pratt's appointment?

Mr. R. Perhaps you had better read it to her, and ask if this is the appointment she means?

Mr. G. (After reading the document.) She says yes.

Mr. R. I think the same, that John Ii and Dr. Judd recommended this man; ask her what she means by that?

Mr. G. She says that Dr. Judd and John Ii arrived there, and she met them upon the Island of Kauai. She conversed with them about it and she signed the paper. She speaks as if this was not the paper. She says my paper, I am confident about, and I never saw Boyd there upon that Island. She says I have met Boyd, but it was here. I put my name to a piece of paper and gave it to Boyd here.

She says that Pratt's commission was made at Kauai, and given to him there.

Mr. R. But John Ii and Dr. Judd recommended him to her?

Mr. G. That is the way she states.

Mr. R. Ask her if she knows the difference between a sheriff and a deputy sheriff?

Mr. G. She says that she knows nothing about Pratt's acting. Soon after giving him the commission she came up here. But that does not answer the question I put to her.

Mr. R. Ask her again distinctly, this, whether she considers that Dr. Judd is the King of the Hawaiian Islands or has been at any time?

Mr. G. She says at the present time?

Mr. R. Yes, at this or any time.

Mr. G. She says I do not know that such was the case.

Mr. R. Ask whether she thinks he was equal to the King?

Mr. G. She says it is not clear to me wherein he is the same as the King, because Dr. Judd receives his work from the King. She says that when the King sees that a thing is good he gives it out to be done and it is done.

Mr. R. Ask her if Dr. Judd did something which the King did not tell him to do, and which afterwards turned out not to please the King, would the King hesitate to putting an end to it or revoking it?

Mr. G. She says that he would stop his doing it.

Mr. R. Then ask her if she and the chiefs do not understand that every thing which Dr. Judd does, he is obliged to get permission from the King to do?

Mr. G. She says when he makes representations of the state of his business or doings, and it pleases them, they consent with the King, but if they look at and regard it in an unfavorable light, they, with the King, say stop.

Mr. R. Ask her when James Young was judge of Kauai in foreign cases?

Mr. G. She says the first year she was down there she did not appoint him, but the second year, or when the King came down, she with the King, appointed him. She does not recollect what year.

Mr. R. Was it last year?

Mr. G. It was before last year.

Mr. R. Could she be certain enough to know whether it was in 1844?

Mr. G. It was before December, 1844. She thinks it was in 1843, perhaps.

Mr. R. She said something about referring people to Dr. Judd's business; what does she mean by that? Ask her to explain what she means?

Mr. G. She says that when she was on Kauai, and if there was

difficult case came up before her, that she and James Young not settle, they said to the parties go and see Dr. Judd and he it straight.

R. Why did she do so?

G. Because she was not well skilled in that kind of work.

R. Ask her if she remembers any thing about my being appointed to serve the King and chiefs?

G. She says we appointed him.

R. What was it for?

G. Because they were awkward or unskilled.

R. Ask what was the particular business I was to do for

G. She says you were appointed to assist the judges, and for various duties and offices in which they were unskilled, and that you were to assist them, because they were not skilled in doing business with foreigners.

R. Ask her if she knows when that was?

G. She says that when she came up here from Kauai, she came here and in conjunction with the Governor and Dr. Judd, sent a letter to the King concerning you, and the King said yes you were appointed.

R. Did she ever get a letter from the Government or Governor any body, notifying her of my appointment?

Ten Eyck. I have set and heard this for some time without objection, but in my examination, I have not said a word about your appointment.

Ricord. But this is a question of universal agency on the

Dr. Judd, and I want to narrow that down. She has said that Dr. Judd was a man of considerable work, and I want to ask whether I was not a man of considerable work, because if I were, and my works clashed, that will go to qualify Dr. Judd's powers.

the Board. You are acting on the defensive before they have brought their proof. This is coming to be exactly in opposition to what we decided the other day.

R. I will not insist upon it; I will put the question in regard to Dr. Judd.

the Board. Yes, put it in that way if you like.

Ricord. Ask her, please, if the Doctor ever sent her a notice of my appointment?

Ten Eyck. That comes to the same thing.

the Board. That is the same thing. The cross-examination is confined to testing the truth or memory of the witness.

Ricord. Then I will waive that. I have no more questions to ask. I would like, if it be within the field, to ask some more questions at a future time. I have come here unforeseeing who the witnesses would be. Must I ask them now?

By the Board. Yes, you must ask them now, if they are in the cross-examination. You can have her here again in the defence.

Mr. Ricord. Please to put that down as a precedent. In the case of Mr. Richards, we adjourned both in the direct and cross-examination.

Mr. Ten Eyck. Please ask her one more question, whether she is one of the highest chiefs on these Islands?

Mr. Gilman. She answers as they always do, she says she is a chief, but she is not so high as the King.

*Mr. Milo Calkin re-called to the stand.*

Mr. Ricord. Mr. Calkin has been brought here before, and now I suppose he comes *de novo*. I did not object before, but as he comes now on a new point, I should like to ask him some questions on his *voir dire*, concerning his interest. I do not know that his examination before has any relation to the examination now.

By the Board. We think it is out of rule. He has been sworn and received.

Mr. Ricord. But I would like to object now, if I may do so.

Mr. Ten Eyck. Mr. Calkin you have already sworn that you have resided some time on these Islands?

Mr. Calkin. Yes sir.

Mr. T. E. Have you had business transactions with the Government or any of its agents?

Mr. C. Yes, sometimes.

Mr. T. E. Have you been a merchant on this Island?

Mr. C. Yes sir.

Mr. T. E. How long?

Mr. C. I have been in business for myself about fifteen months, but I have been engaged in mercantile business for seven years past.

Mr. T. E. Mr. Calkin, according to your understanding, who has generally been considered to be, and who has been held out to be, and who has acted as the general confidential agent of this Government in business transactions with foreigners?

Mr. C. Dr. Judd. He is the only man that I ever knew.

Mr. T. E. For how many years past has that been your understanding of the situation of affairs?

Mr. C. Three years, since the spring of 1843.

Mr. T. E. What has been the general usage and practice and course with the foreign community, when they have had business to do with Government, to whom have they applied for the views and opinions of Government?

Mr. C. To Dr. Judd, I have always understood, and I have heard others say so.

Mr. T. E. If any bargain or arrangement was desired to be made

with Government by any foreigner, with whom would the terms and so forth of such bargain be negotiated?

Mr. C. Dr. Judd.

Mr. T. E. In what light, by general usage and practice, were the statements and views of Dr. Judd, in regard to the Government, considered?

Mr. C. As the views of the Government? He was considered the only proper organ of communication between the Government and foreigners.

Mr. T. E. Have you ever known that the King and native rulers have dissented from or rejected any of the acts of Dr. Judd as agent, or have they uniformly acquiesced in or tacitly consented to his acts and doings?

Mr. C. I do not remember of any of his acts being dissented from; most of them have been approved. I do not recollect of any dissent.

Mr. T. E. Have you at any time undertaken to negotiate for the lease of lands with Dr. Judd?

Mr. C. Yes, sir.

Mr. T. E. What occurred between you and him?

Mr. C. I applied to Dr. Judd for the lease of land in Lahaina. He said the land belonged to the King, but was his to dispose of; that he had the entire disposal, and I must come to him to negotiate, which I did.

Mr. T. E. What did he say about the King?

Mr. C. He said I must come to him as the King had put all his lands into his hands, and he was the agent for them. He said he must charge a large sum for it, as he must have the money, as money was his object.

Mr. T. E. Have you at any time while you were residing at Lahaina made application to the King and Premier or Governor on business matters, such as chartering vessels, etc.?

Mr. C. Yes, I have several times gone to them on business matters. One time I went to charter a vessel and was referred by the King himself to Dr. Judd, as the man who had charge of all his business with foreigners. I have also applied to the Governor at Lahaina, and also been referred to Dr. Judd.

Mr. T. E. Who do you mean?

Mr. C. The present Premier. Kekauluohi, the former Premier, has also referred me to Dr. Judd on business.

Mr. T. E. From the conversations you have had with those persons, what did you understand from them to be Dr. Judd's agency in connection with Government?

Mr. C. I can bring to my recollection one conversation, when the King replied to some suggestion of mine, Dr. Judd got us through our difficulties with Lord George Paulet so well that we have perfect confidence in him that he will manage our affairs. We have confidence

in him because he is skilful in getting us out of difficulties, and he will do all our business. Something to that effect. Or he manages our affairs with foreigners.

Mr. T. E. Did either the King or Premier or Governor ever intimate to you any restriction that was placed on Dr. Judd in regard to his agency and Government affairs?

Mr. C. No, sir.

Mr. T. E. Did Dr. Judd at any time apply to you to take up any papers you had in your hands belonging to Ladd & Co.?

Mr. C. Yes, sir.

Mr. T. E. When and what and where was it?

Mr. C. In the month of February last he came to me while I was sick, very sick, and requested me to pass into his hands the lease of the canal, or the contract of the canal at Lahaina.

Mr. T. E. Who was the contract with?

Mr. C. It was a contract between the Government and John Stetson, transferred to Ladd & Co. I received it from Ladd & Co. and held it as their property.

Mr. T. E. What did he say about it?

Mr. C. He said I had better pass it into his hands, and not into Ladd & Co.'s hands, and that if I did not pass it into his hands he should be under the necessity of seizing the canal, which there would be no necessity of if I gave it up, which I declined doing.

Mr. T. E. Did he assume an authoritative manner?

Mr. C. He was very persuasive in his manner, but not authoritative. He tried very hard to get me to let him have the contract.

Mr. T. E. Did I understand that if you did not give it up he said he should be obliged to take legal measures? Did you say so?

Mr. C. Yes, that he was determined to take it.

Mr. T. E. Did he take it?

Mr. C. Yes.

Mr. T. E. In what way?

Mr. C. I know nothing more than that one day Mr. Swinton stated that he had received orders from the Home Department to seize the canal, and persons were notified that in future the sheriff would receive the fees, and I was ordered to give up the canal and all that belonged to it.

Mr. T. E. Did you do so?

Mr. C. Yes.

Mr. T. E. Were any papers left with you?

Mr. C. Only the notice of the seizure.

Mr. T. E. Notifying you that they had taken the property. Were no legal measures resorted to?

Mr. C. I never saw any other documents in regard to that matter, and no legal measures were commenced with me.

Mr. T. E. Who has had possession of it since?



Mr. C. The Government. Dr. Judd has intimated that he would not pay any arrears to me for money I have expended on the canal, because I would not give up the papers.

Mr. T. E. What was the canal worth?

Mr. C. I was receiving three dollars for every ship that arrived. The two years that I had possession of it the receipts had been spent in repairs. I got it in good order at the expense of Ladd & Co. till the 1st of January, and from January to February I spent one hundred and twenty dollars to put it in good order.

Mr. T. E. Has it been in good order this season?

Mr. C. Yes, sir.

Mr. T. E. From what you know of that canal, what do you suppose have been the probable receipts for it?

Mr. C. I suppose this year, since the Government took it, it has netted between six and eight hundred dollars. If they have collected all the fees, as they gave notice they would do, it cannot be much less than eight hundred dollars.

Mr. Ricord. I would wish that the cross-examination may be deferred as the field is a large one.

Mr. Brinsmade. In all your business with the Government, whom have you understood to be the general universal business agent of Government?

Mr. C. I have stated before, Dr. Judd.

Mr. B. Did he always seem to you to be the man of authority, and to speak authoritatively on business transactions with the Government?

Mr. C. Yes, sir.

Mr. B. Has he seemed to you in business interests to control the actions of —

Mr. Ricord. I would like to object to the form of the question. There is nothing necessary but a yes or a no in reply. The cross-examination would lead me much into the track that Mr. Brinsmade takes.

Mr. B. I will vary the form of the question. Have you known in business relations with foreigners any native Government independent of the foreign agents?

Mr. C. No, sir.

Mr. B. In relation to business with foreigners?

Mr. C. No, sir.

Mr. B. By whom do you consider the measures, policy and acts of Government in relation to the interests of foreign residents to be controlled?

Mr. C. By the foreign agents.

Mr. Ricord. Subject, of course, to the approval or disapproval of the King?

Mr. C. That I know nothing of, I always looked to Dr. Judd.

Mr. B. Through whom have you received what knowledge you have had of the policy of Government in relation to foreigners?

Mr. C. Through Dr. Judd principally. I have conversed with him and Mr. Ricord and Mr. Richards, but Dr. Judd was the principal man.

Mr. B. Have you ever, with any other agent of the Government, concluded any business without the concurrence of Dr. Judd?

Mr. C. No, sir, I have not.

By the Board. You spoke of conversing with the King. Could any person, previous to the present organization of Government, have an interview with the King by means of an interpreter?

Mr. C. Yes.

By the Board. Did you ever know of a case in which Dr. Judd assented to any measure and the King afterwards negatived it? Any case in which they differed; and if so, which was conclusive?

Mr. C. No, I do not.

Mr. Ricord. Is the direct through? I have a long list of questions to propound on the reverse, and I should like therefore to consider the witness on the stand when we meet again.

The Court then adjourned until Friday, the 4th of December, at 7 o'clock, P. M.

#### TWENTY-FIRST DAY.

The Board met at the hour appointed.

Mr. Ricord. Mr. Calkin when did you arrive at the islands?

Mr. C. As a resident? I touched here several times before I became a resident.

Mr. R. As a resident?

Mr. C. November, 1836.

Mr. R. What vessel did you come in?

Mr. C. I came in the Charles Carrol of Boston.

Mr. R. How many years have you lived on the islands?

Mr. C. Ever since that time, excepting a passage home and back. I have been a resident ever since.

Mr. R. You said the other night that you had been in business for seven years. With whom were you in business?

Mr. C. With Ladd & Co.

Mr. R. In what capacity?

Mr. C. As head clerk.

Mr. R. Can you particularize the years: from what year to what year were you clerk to Ladd & Co.?

Mr. C. I commenced in 1837 in their employ—in the summer of 1837. From that time till the January of 1842 I was in their employ.

Mr. R. Did you ever sign any notes for them? that is, sign their names to any notes?

Mr. C. I think I have for small notes to natives.

R. And sometimes your own name—Ladd & Co. by your-

C. Yes. I never signed for them as Ladd & Co. without my name to it.

R. But you have signed so?

C. Ladd & Co. by myself.

R. Did you act as general agent for the house at that time?

C. That is rather an extensive term. I acted in the capacity of clerk.

R. That comprised all the business of Ladd & Co.?

T. E. I do not know that I asked Mr. Calkin a single question about Ladd & Co.

R. I only wanted to know the nature of his position. the Board. What is the object?

R. That you may be better able to understand the position of the Board.

Has that any thing to do with direct examination?

R. It has, I believe, underneath; although I do not take down questions.

T. E. I did not ask whether he had been in their employ at

R. He answered so.

T. E. He said he had been here seven years, part of which was clerk to Ladd & Co.

R. And I asked him to define that position. How long were you sent when you went to the United States?

C. Fourteen months.

R. What particular months?

C. From January, 1842, to March, 1843.

R. Had you occasion to call on Dr. Judd for aid in doing business with the chiefs before he took office in 1841—I mean when he was a missionary?

C. I may have done so to get him to act as interpreter. He was considered as an agent of the Government at that time.

R. Do you think you did have recourse to him?

C. I am not able to say.

R. But do you think so?

C. I think it very likely that I may have asked him to inter-

R. Was he a convenient man for the purpose?

C. Yes.

R. Was he ever used in that capacity before he was appointed?

C. I should think he was.

R. You said on the direct that you did business for yourself months. Where did you obtain your stock?

C. From Ladd & Co.

Mr. R. What did it consist of?

By the Board. That will not do, Mr. Ricord.

Mr. R. Were you in company with them before their failure?

Mr. C. No, sir.

Mr. R. Were not some of your advertisements signed Milo Calkin & Co.?

Mr. T. E. I object to that.

Mr. R. I want to know whether that consisted of Ladd & Co. I want to know who the company consisted of.

Mr. T. E. I do not know and do not care.

Mr. R. But I do care. Until it is explained it is enigmatical.

Mr. T. E. I object.

By the Board. We do not think the question proper.

Mr. R. How do you know it does not consist of Ladd & Co.?

By the Board. He has stated so.

Mr. R. How do you know it does not consist of some one interested in this case? It is fair to know: it is fair to Mr. Calkin. I should desire to have it spread upon the record if I appeared in the same way with a company to my name. I want to keep within the field of cross-examination. If you will define the scope given to me by the direct examination I shall be obliged to you. The subject matter of the direct examination has been very diffuse, and it is almost impossible to say what it did not comprise. I have not limited them.

By the Board. If you have any other purpose in examining Mr. Calkin than to cross-examine him on the points introduced by Mr. T. Eyck, you must state so, you cannot do it here, for this is simply the cross-examination.

Mr. R. When did your connection with Ladd & Co. cease? I mean as clerk and agent?

Mr. C. As agent on the 1st of November, 1844.

Mr. R. Have you had any final settlement with them?

Mr. C. Yes.

Mr. T. E. I object to that.

Mr. R. He said yes. On what grounds do you object? By the books I have a right to know.

By the Board. You asked that before.

Mr. R. What of that? Am I not at liberty to take advantage of any discrepancy in his answers? I know that in the course of cross-examination it is allowed to ask the same question fifty times if the party thinks proper.

By the Board. But in regard to this examination you cannot. You have already cross-examined —

Mr. R. Then I am not to cross-examine him on any question on which I have before examined him, although it comes within the scope of the direct examination?

Mr. T. E. Will Mr. Ricord explain where I have touched on

this subject. The arbitrators know that if there were any grounds on which he wished to object to the witness, he ought to have done so at the first.

Mr. R. The books support my position—they are full of it. I am surprised that the gentlemen should take that ground, that the gentlemen should wish to limit me in such questions as go to the favor. I hope that is put on the record—it will surprise the legal world.. (To witness.) Have they paid you all their arrears of salary and clerk hire, and all that is due?

Mr. T. E. I object to that.

Mr. R. If you are inclined to sustain that objection, I claim time to argue the question. I ask for an adjournment that I may have an opportunity of debating it. I am loath to do so, and I did not come here expecting any such quibble. If that objection is sustained, I wish it to be sustained with my reasons against it appearing on the record.

By the Board. You can ask him that question.

Mr. R. Then have they paid you every thing due to you for salary, clerk hire, and all profits?

Mr. C. Yes, sir.

Mr. R. Do they owe you nothing at this date?

Mr. C. Nothing that I am aware of.

Mr. R. Are you not one of the bondsmen for Ladd & Co. to secure the costs of this arbitration?

Mr. C. No, sir.

Mr. R. Will you inform me, sir, whether you have not been the friend and confidant of Ladd & Co. for the last three years?

Mr. T. E. I object.

By the Board. We do not think that a proper question.

Mr. R. He said that during the last three years Mr. Judd has been general agent of Government, and I want to know whether during the three last years he has not been the friend and confidant of Ladd & Co.

By the Board. For what purpose?

Mr. R. Why, the purpose you will see when we come to debate. If he has not been the question cannot hurt him, but if he has I want to know it, it is connected with my defence.

Mr. T. E. That is the reason why I object, because it is connected with your defence.

Mr. R. I do not say it is within the line of my defence, but I want to use it defensively when I come to it.

By the Board. You cannot ask him any thing that has not been touched on in the direct examination.

Mr. R. Is it not relevant to his bias? And is not the witness' bias to be elicited in the cross-examination? All motives of bias, friendship, relationship, etc., are to be got out of the witness on cross-

examination. It is not to disqualify the witness, it is to ameliorate the appearance of the testimony.

By the Board. If that is your object you can ask the question.

Mr. R. Yes, that is my object. (To witness.) Have you not been the friend and confidant of Ladd & Co. for the last three years?

Mr. C. I have been their friend, but I do not think I have been their confidant.

Mr. R. Have you no claim upon Government for land under lease similar to the lease of Ladd & Co. under date the 24th November, 1841?

Mr. T. E. I object to that.

Mr. R. Then I will show you that if he has any lease depending upon a like issue with that of Ladd & Co., it will go to ameliorate his evidence. That is to say, if upon any award you may hereafter render, he can base a foundation upon which to raise a claim of his own, it ought to be considered. The books say so.

By the Board. We should like to see it.

Mr. R. Not having foreseen the question I have not looked for —

Mr. T. E. I will state the reason why I object. The arbitrators decided the other day that upon the cross-examination Mr. Ricord should not ask any question to the subject of which I had not called the witness' attention. That being the rule of law, and they having decided it to be the rule here, I insist upon its being adhered to. I have not asked Mr. Calkin any thing about his private affairs. So far, however, as a simple answer to this question is concerned, I do not care; but if it is permitted in one case, it will be in another. Give the gentleman an inch and he will take an ell. If the point is yielded in one instance it has to be yielded in half a dozen, and perhaps fifty, and the examination of the witness will be got through in about three or four hours at this rate. If Mr. Ricord wants to prove any thing by Mr. Calkin, he has time to do so. Mr. Calkin will be here three or four days yet at least, and if not Mr. Ricord can take his deposition; therefore it can make no difference to him.

Mr. R. Here are some of the motives given. One is, "When the effect would be to deprive the witness of the enjoyment of an interest in possession; or place him in the immediate possession of a right; or increase the value of his property; or in short, wherever the direct effect of the executed judgment would be to produce some benefit, or work some prejudice to the proposed witness." 1 Star., 109. Now, what I want to ask will not hurt Mr. Calkin. There has been a lease alluded to in the direct examination of Mr. Calkin, and I want to know whether he had or had not a lease obtained from Government very much like that of the 24th November, 1841.

By the Board. Has that been alluded to in the subsequent examination of Mr. Calkin?

Mr. R. Yes, in the subsequent examination there was a lease mentioned.

Mr. T. E. The very authority which he has read shows that he cannot insist upon asking the question. When Mr. Calkin was called on the stand by us, then was the time to have spoken; but he permitted him to be sworn without questioning his interest, and now he comes too late.

Mr. R. With regard to that it has been decided that I could either examine the witness on his *voir dire*, or I might afterwards, in cross-examining him, elicit what I pleased to show his bias, or to show his interest, which would go to the favor. I could have examined Mr. De Fiennes on his *voir dire*, or I could have let it alone. We went into the case then, and it was decided that notwithstanding he was admitted to give evidence, I had full latitude to cross-examine him concerning his interest, which I did.

By the Board. We have made this new rule to shorten the examination, at the same time believing it to be just to both parties. If you wish to make the witness your own you have permission on the defence.

Mr. R. Ought you, then, to have made a rule in conflict with the rule of law?

By the Board. It is not in conflict with the rule of law.

Mr. R. Let us see. This is very important to me. "The objection to competency ought to be taken in the first instance, and before the witness has been examined in chief. It has, however, been held, that if it be discovered at any stage of the trial that a witness is interested, his evidence may be struck out." 1 Tem. R., 720. 2 Camp., 14. 1 Wightwick, 64. Holt C., 313. 1 Esp. C., 37. 2 Moore, 500.

Mr. T. E. It must be done on independent evidence.

Mr. R. "Where it is discovered in the course of the cause that the witness is interested, his evidence will be struck out, although no objection has been made to him on the *voir dire*." 1 Star., 137. 2 Camp., 14. 1 Wrighter, 64.

By the Board. Very true, "in the course of a cause," not of an examination.

Mr. R. Let me read on. "It would be manifestly unjust to preclude the party from impeaching the competency of a witness by satisfactory evidence, merely because he had taken the objection in the first instance, in the proper mode, and the witness had been hardy enough to misrepresent his situation." *R. v. Wakefield, et. al.*: Lancaster Spring Assizes, 1827. It seems to me that I am only examining Mr. Calkin as to his position.

By the Board. We do not think it proper those questions should be asked.

Mr. R. (To witness.) What means have you of knowing Dr. Judd's agency in Government business to have been a general agent?

Mr. C. I had some business transactions with him, and know that he always had the reputation of being the business man of Government, in business between Government and foreigners.

Mr. R. What were those transactions? Please be particular, because I want to know exactly what your definition means?

Mr. C. I have sold articles of merchandise to Government through him.

Mr. R. What else?

Mr. C. I have negotiated for the lease of lands through him, and was told by himself to do so.

Mr. R. You say by general report; what was the report?

Mr. C. The report in the community.

Mr. R. What was the community?

Mr. C. The respectable merchants and foreigners residing on the Islands. It is understood, I believe, by nearly every man in the community, that Dr. Judd has been held up as the man to transact business between foreigners and the Government.

Mr. R. Do you mean by that, that he had an exclusive agency; that no body else could transact business between the Government and foreigners?

Mr. C. I know nothing about that.

Mr. R. Was it a general or exclusive agency?

Mr. C. I am not able to decide. I considered him as a general agent to do all the King's business.

Mr. R. Cannot you give me the precise dates between which you mean to say he held a general agency?

Mr. C. It was between the time of my return from the United States, in March, 1843, and this time.

Mr. R. Have you considered him all that time as general agent?

Mr. C. I have known no other person so well or proper to transact business with.

Mr. R. Explain that?

Mr. C. As one appointed by the King, so I understood.

Mr. R. How do you get at those appointments?

Mr. C. They have been published at different times.

Mr. R. Have you seen no other appointments published besides his?

Mr. C. Certainly I have.

Mr. R. Who else have you seen appointed?

Mr. C. All the foreign ministers in their different sphere of action.

Mr. R. Will you name them?

Mr. C. The Attorney General and other officers.

Mr. R. What are their names?

Mr. C. The Minister of Foreign Relations, Minister of Finance, and Minister of Public Instructions.



Mr. R. Do you call them general agents?

Mr. C. No sir; but if I had any money transaction to do with the Government, I should go to Dr. Judd.

Mr. R. But upon what principle, if you found all the ministers gazetted in their limited spheres?

Mr. C. If I had any money or barter transaction, I should go to Dr. Judd.

Mr. R. Why?

Mr. C. Because he has always been thought the agent to barter.

Mr. R. Has he been gazetted to barter for Government?

Mr. C. If I had a money transaction with the Government I should go to him.

Mr. R. Should you think he had the authority of the papers?

Mr. C. I should think he had the sanction of the King.

Mr. R. How does he give that? by his papers?

Mr. C. I should suppose so.

Mr. R. Will you limit the time between the two years? Was it between March, 1844, and May, 1846, that you mean he was general agent?

Mr. C. I mean since my arrival from the United States.

Mr. R. Can you state positively that it was within those dates?

Mr. C. Yes, it was within those dates?

Mr. R. Comprising them both?

Mr. C. I should think so.

Mr. R. Who co-operated with Dr. Judd between March, 1844, and April, 1846?

Mr. C. In what respect?

Mr. R. I mean in any departmental powers—they within their spheres, and he within his sphere?

Mr. C. The ministers that I have named.

Mr. R. When were the ministers you have mentioned appointed?

Mr. C. I am not able to say from recollection; they were appointed at different times.

Mr. R. Do you recollect when I was appointed?

Mr. C. I do not recollect the date.

Mr. R. The year?

Mr. C. It was in 1844, I believe.

Mr. R. Was it early in 1844?

Mr. C. In March or April, I believe.

Mr. R. Did you see the notice?

Mr. C. I believe so. It was given in the paper, I believe, or by proclamation.

Mr. R. What paper?

Mr. C. In the Friend or Polynesian.

Mr. R. The Polynesian was not printed at that time. Have you since seen the Minister of Finance Gazetted?

Mr. C. Yes.

Mr. R. Do you think the King has as much power to appoint or constitute a minister of finance or public instructions, as he has to appoint a general agent?

Mr. C. He would have power to appoint either, at his discretion.

Mr. R. Would those appointments be binding upon you?

Mr. C. Certainly, I suppose so.

Mr. R. Would you be obliged to take notice of them?

Mr. C. It would guide me, of course in my business transactions.

Mr. R. Where have you chiefly resided on these Islands?

Mr. C. Chiefly at Honolulu.

Mr. R. Latterly?

Mr. C. Latterly, at Lahaina, for the last two years.

Mr. R. From what date to what date?

Mr. C. From February, 1844, to June, 1846.

Mr. R. What Island is Lahaina upon?

Mr. C. Maui.

Mr. R. How distant is it from Honolulu?

Mr. C. Sixty or eighty miles, perhaps seventy-five miles.

Mr. R. By water?

Mr. C. Yes sir.

Mr. R. Where has the King resided most of the time?

Mr. C. The first year at Lahaina, and after that at Honolulu.

Mr. R. Can you give the dates, or about the dates?

Mr. C. No, I cannot. He visited Honolulu frequently, in the mean time.

Mr. R. When did he leave to make this his stated residence?

Mr. C. I am not able to say, but I believe it was in the spring or fall of 1844; it must have been the fall of 1844, it was after summer.

Mr. R. Has he resided here permanently, since that time?

Mr. C. I am not able to say whether he went back to reside again at Lahaina, or whether he stopped here permanently at that time. I know that during the summer of 1844, he resided at Lahaina, for I had frequent intercourse with him.

Mr. R. Do you recollect seeing him there in the summer of 1845?

Mr. C. In the fall of 1845.

Mr. R. You say he was there in the summer of 1844?

Mr. C. Yes sir.

Mr. R. Will you explain, Mr. Calkin, how it is that you can, on your oath, state that Dr. Judd is the only man concerned in transactions with foreigners and the Government, since the spring of 1843?

Mr. C. The only man that I have known to transact mercantile transactions.

Mr. R. Did you ever know any other person applied to for the views and opinions of Government since 1843?

Mr. C. Yes a good many.

Mr. R. And whom?

Mr. C. I have applied to others myself; I have applied to Mr. Richards.

Mr. R. And who else have you known? Any one to apply to me?

Mr. C. I, myself, have I think, I will not be certain.

Mr. R. Do you know whether I was applied to in that time?

Mr. C. I presume so in your capacity, as head of the office you fill.

Mr. R. Do you consider the applications to Mr. Richards and myself, as effectual as those to Dr. Judd?

Mr. C. In the capacity in which you were applied to, I presume so.

Mr. R. And as obligatiory on the King?

Mr. C. Yes sir.

Mr. R. Were you never, within the time mentioned, that is, the last three years, shown any of my written instructions and letters to the Governor of Maui, on Government subjects?

Mr. C. Yes, I think you showed them to me.

Mr. R. Did he ever show any?

Mr. C. Who, the King?

Mr. R. No, the Governor, or Mr. Swinton, perhaps?

Mr. C. No, I do not recollect.

Mr. R. You know they have been given?

Mr. C. I saw them in your hands.

Mr. R. Do you know what topics they were on?

Mr. C. On the subject of the petitions at Lahaina, I believe.

Mr. R. Did you ever at that time, know me to visit Lahaina officially, for the transaction of Government business?

Mr. Ten Eyck. I object to what the gentleman has been getting out.

Mr. R. I want to understand the field of the gentleman's inquiries. He has got out that Dr. Judd was the agent of the King, and that his acts were binding upon the King. I want to know whether Mr. Richards and other members of Government did not exercise functions like those.

By the Board. You are trying to prove the contrary.

Mr. Ricord. Not to prove the contrary. He meant to say that Dr. Judd's agency was general, and I am trying to make him explain what he means.

By the Board. We cannot allow that question.

Mr. Ricord. You say that Dr. Judd negotiated all bargains with foreigners within that time?

Mr. Calkin. I said that I considered him to be the man, but there might have been bargains made that I know nothing about.

Mr. R. Did he conduct the negotiations with Mr. De Fiennes, for the judgeship of Honolulu?

Mr. C. I do not know.

Mr. R. Did he conduct the negotiations with Mr. Giles Waldo, for the same office?

Mr. C. Yes sir.

Mr. R. Did he? How do you know he did?

Mr. C. All the negotiation there was on the subject, I was present at, I believe.

Mr. R. Was there any writing? Be careful and recollect.

Mr. Ten Eyck. I should like to know what that means, by telling him to be careful?

Mr. R. I really do not mean to offend Mr. Calkin, but it is a thing of every day occurrence—remember you are on your oath. Who has not heard that? It seems to me that the gentleman wants to object to facts which are axioms in the courts abroad.

Mr. C. I do not know that there were any negotiations, farther than those conversations between Mr. Waldo, myself and Dr. Judd.

Mr. R. He never showed you any letters?

Mr. C. He may have done so, I do not know what they were. He threw them down on the table and said they had not caught him.

Mr. R. Who instructed the Governor at Lahaina not to receive Mr. Abell as consul?

Mr. Ten Eyck. I object.

Mr. Ricord. Then did Dr. Judd instruct the Governor and authorities of Maui not to receive Mr. Abell as vice-consul of the United States, in Lahaina?

Mr. C. I am not able to say.

Mr. R. You said, Mr. Calkin, that Dr. Judd was considered the only organ of communication between the Government and foreigners; what do you mean by that?

Mr. C. I meant to confine the observation to business transactions concerning dollars and cents, to mercantile transactions. He was head man and every body went to him. I did, and I suppose every body else did. He had the reputation of being that.

Mr. R. Did you ever have personal communication with the King without Dr. Judd's interpreting, in the three years?

Mr. C. Yes, several.

Mr. R. Who went with you?

Mr. C. Sometimes I went alone, and sometimes my wife went with me.

Mr. R. Did you need an interpreter?

Mr. C. No, I can speak the native language pretty well.

Mr. R. Would he talk with you on business?

Mr. C. Yes.

Mr. Did you ever have personal interviews with the Premier at that time without Dr. Judd's presence?

Mr. C. Yes.

Mr. R. Did he talk in the same way?

Mr. C. Yes.

By the Board. Do you refer to the present Premier?

Mr. Calkin. No, to the last.

Mr. Ricord. Did you ever know persons to have interview with the King and Premier without Dr. Judd being present to interpret? Through Mr. Baldwin for instance?

Mr. C. Yes, almost any respectable person had access to him while he was in Lahaina.

Mr. R. That was in the summer of 1844?

Mr. C. Yes.

Mr. R. How do you know, when you say that Dr. Judd's acts were never dissented from, or repudiated by the King?

Mr. C. I never made such a statement, I said I was not aware of such a thing, but it was not in my power to know all Dr. Judd's doings.

Mr. R. What acts of Dr. Judd's do you know to have been suffered to stand by the King, that he had done independent of the King and chiefs?

Mr. C. I cannot say that he has done any acts independent of them, he may have conversed with them about all.

Mr. R. You said that Dr. Judd negotiated in relation to a lease of land at Lahaina. When, and how did you bargain together?

Mr. C. I cannot tell the date when I first spoke of the subject. Dr. Judd was in Lahaina in the fall of 1845, and part of January in the present year. I asked him, personally, who I should apply to. He said the place belonged to the King and Government, and he had the control of it.

Mr. R. What was the land?

Mr. C. It was a piece situated at the corner of Punchard's establishment at Lahaina.

Mr. R. Was it not for land in Honolulu here?

Mr. C. No.

Mr. R. Did you never negotiate with him for land in Honolulu?

Mr. C. I think not, if I have, it was for somebody else, not for myself.

Mr. R. The Beritania premises, did you never negotiate for them?

Mr. C. I do not recollect where those premises are.

Mr. R. Where General Miller resides.

Mr. C. No sir.

Mr. R. Well, how about that negotiation at Lahaina? Will you give the incidence—what it was about?

Mr. C. I applied for a lease of a building spot for a store, but the terms were so high, that I decided not to accept. The rents were so high.

Mr. R. Did you consider Dr. Judd as bargaining for himself and in his own right?

Mr. C. He said he had the disposal of it for the King.

Mr. R. Did he not inform you that he would have to inquire of the King?

Mr. C. No, he told me that he had inquired. I remember now I had spoken previously to him in Honolulu about it.

Mr. R. What did he tell you on that occasion?

Mr. C. I cannot recollect—there was nothing fixed upon at that interval.

Mr. R. Did he inform you that he had not any thing to do with it, but that he would make inquiries?

Mr. C. I think he did make use of that expression.

Mr. R. Did he ask you to make an offer?

Mr. C. At that time I am not certain. I cannot recollect; perhaps he did, perhaps he did not.

Mr. R. Would it be fresh in your memory if you made an offer, and if Dr. Judd said he would ascertain who had the leasing of it, and if it could be leased at all?

Mr. C. I do not recollect the offer. He said he was certain about the leasing of it.

Mr. R. Were you sick at that time?

Mr. C. I was.

Mr. R. Who also negotiated?

Mr. C. Mr. Benson and myself together.

Mr. R. What success had Mr. Benson with regard to it?

Mr. C. We were both together.

Mr. R. You say Dr. Judd went afterwards to Maui?

Mr. C. Yes.

Mr. R. Did you apply to him there for that piece of land?

Mr. C. I have said that at Lahaina I applied, and he said he had the charge of it.

Mr. R. At that time?

Mr. C. Yes.

Mr. R. Did he say that he had got it since you first spoke to him about it?

Mr. C. Yes, sir, he did. There was a dispute about the land, whether it belonged to Kanaina or the King.

Mr. R. What did Dr. Judd say in regard to it when he was there in Lahaina?

Mr. C. Do you mean what terms did he ask?

Mr. R. What was the course of conversation with you about that land?

Mr. C. I think the terms were a thousand dollars a year rent for fifteen years, and the buildings to revert to the owner at the expiration of the lease.

Mr. R. Who was the owner?

Mr. C. I never understood any thing more about it than I got from Dr. Judd. Dr. Judd said it was the King's or aupuni's, I do not know which, but that it came under his control.

Mr. R. Well, were you not disappointed about that lease?

Mr. C. Yes, I should have liked to have got it at a lower rent, so that I might have a place to put a store-house, but I made a calculation and found it would not do to pay such a high rent, and the buildings to go to the owner at the end of the lease.

Mr. R. Was not your having failed to get the lease the reason why you are obliged to leave the islands? Is not that your motive for leaving the islands?

Mr. C. No, sir.

Mr. R. Well, did you not write this letter? I think that contains something about it.

Mr. C. Yes, sir.

Mr. T. E. I think I have a right to see that before it is offered in evidence.

Mr. R. I only want to read a passage from it.

Mr. C. The date is the 16th of October, 1846.

Mr. R. I do not know that I shall file this in evidence.

Mr. T. E. Then I trust you will not read out of it, if you do not intend to offer it in evidence.

Mr. R. Then perhaps I will offer it in evidence.

Mr. T. E. Then I ought to see it. (After reading the letter.) I have no objections so far as I am concerned.

Mr. R. I want to refresh Mr. Calkin's memory. This is a letter from Mr. Calkin to Dr. Judd.

Mr. T. E. A letter from Mr. Calkin to Dr. Judd, and marked private.

Mr. R. I will read the letter.

LAHAINA, October 16, 1846.

DEAR SIR,—I am again in Lahaina on my oars—don't know yet what I shall do for a livelihood, but wish to do something, and in view of carrying into effect that wish, I have thought proper to inquire of you if you can do any thing to forward my interests by leasing the point of land joining Punchard's (late Peck's) place, the one I spoke for some time since. The business here will fall off another year, and the competition is so great that it will not do to pay so heavy a rent as you then asked for it. I wish it for two years, and intend putting up a cheap adoby or thatched store, and will not interfere with the trees on the ground. It is now lying idle, and no present prospect of being used as a place of business, since Waldo has got Kanaima's place. \

must calculate on doing a small business, and cannot afford to pay a high rent. If I cannot get it I must leave the country this fall and give up altogether, which I do not like to do if I can avoid it. Will you have the kindness to state the best terms you are willing to dispose of it at, and let me know as soon as convenient?

Respectfully, your obedient servant,  
 Hon. G. P. JUDD, Honolulu. M. CALKIN.

That was the origin of my question.

Mr. C. That was a different affair. I do not consider that I am bound to leave the islands now.

Mr. R. You said you had been several times in negotiation with Dr. Judd about land at Lahaina. Any besides this?

Mr. C. No, I do not recollect, except that he acted agent between myself and Kaeo in making out a lease for the premises I held.

Mr. R. You stated that the King remarked that Dr. Judd had got him out of difficulties with Great Britain, and he left him to manage his business as he pleased.

Mr. C. I did not say as he pleased.

Mr. R. Did you mean his foreign affairs?

Mr. C. Yes, sir.

Mr. R. That is, the office of Foreign Relations?

Mr. C. Yes, sir.

Mr. R. When did this conversation occur?

Mr. C. In the summer of 1844—I cannot recollect what date.

Mr. R. Where were you when His Majesty said this?

Mr. C. At his palace or house at Lahaina.

Mr. R. Any body present?

Mr. C. I think the Premier, that is the late Premier, was present. Perhaps Governor Young, I will not be certain.

Mr. R. What made the King say it?

Mr. C. I stated before I could not recollect the subject of the conversation, but I recollect his expressing his confidence in Dr. Judd.

Mr. R. That he had left the foreign relations in the hands of Dr. Judd to manage?

Mr. C. I do not know that he particularized foreign affairs, but affairs between foreigners and natives.

Mr. R. What was Dr. Judd's office at that time?

Mr. C. I believe at that time he was Secretary of State for Foreign Affairs.

Mr. R. You gave some testimony in regard to a canal at Lahaina. Do you recollect any attempt of Mr. Swinton to levy upon or attach that canal as the property of Ladd & Co.?

Mr. C. No, I do not recollect. He attached or attempted to levy upon the goods in the store before I returned from



was never any sale by the sheriff, and I bought them in on my private account.

Mr. R. I want to know if Swinton ever called upon you and said he was going to levy upon the property in the canal?

Mr. C. No, sir.

Mr. R. Did he not ask if the canal belonged to you?

Mr. C. I do not recollect that Swinton did. Dr. Judd did.

Mr. R. Did not Swinton or some other officer have a writ?

Mr. C. I never saw any.

Mr. R. Or go without a writ to you in regard to the proceeds of the canal?

Mr. C. Not to my knowledge—I do not recollect any such transaction.

Mr. R. Do you recollect replying that the canal was yours?

Mr. C. I replied so to Dr. Judd.

Mr. R. When was that?

Mr. C. Sometime after the failure of Ladd & Co.

Mr. R. Upon what occasion?

Mr. C. He asked me about it two or three times. The last occasion was when he was at Lahaina the last time previous to the Government's taking possession of it.

Mr. R. How came you to say so?

Mr. C. He asked me how I held it. I think I gave him a copy of my letter from Ladd & Co., and a copy of the lease.

Mr. R. How did you hold it?

Mr. C. I held it from Ladd & Co., and credited them with the proceeds towards paying off my debt.

Mr. R. Was that founded upon a written request of theirs?

Mr. C. Yes.

Mr. R. Did you follow that request?

Mr. C. Yes, nominally. I was requested to charge the canal to myself at a nominal price, instead of which I held possession of the lease, and gave them credit for the proceeds.

Mr. R. You say you gave them credit for the proceeds. Do you mean for the proceeds in toto, both those you did receive and those you were to receive.

Mr. C. As fast as I received it I gave them credit for it.

Mr. R. Who collected the toll on the canal?

Mr. C. At the time I had it?

Mr. R. Yes.

Mr. C. I did.

Mr. R. Did you make out the bills in your own name?

Mr. C. Yes.

Mr. R. I would like to have you identify the canal contract. You know it?

Mr. C. Yes, I have seen it.

Mr. R. Is this it?

Mr. C. Yes, that is it.

Mr. R. Is this the handwriting of Mr. Stetson?

Mr. C. That looks like his handwriting.

Mr. R. And whose is this?

Mr. C. John Young's, I believe.

Mr. R. I will file this then.

Mr. T. E. Is that not already in evidence? It is printed already, I think.

By the Board. If so, it is not necessary to print it now. There is a lease between Government and Stetson.

Mr. Ricord read and filed the document. [See Doc. Z. 1—Appendix.] (To witness.) Is that an assignable instrument?

Mr. C. I am not lawyer enough to say.

Mr. R. Well, look at it and say whether it is in your estimation.

Mr. T. E. Really, Mr. Ricord, —

Mr. R. The witness is an intelligent one, and I would have liked to have had his views in regard to that. You said that the canal was taken possession of under orders from the Interior Department. When did this take place?

Mr. C. I think I said Home Department.

Mr. R. Yes, I think you did say Home Department. When was this?

Mr. C. In March, I think, of the present year—in February or March, I do not recollect the date.

Mr. R. Who was at the head of the Home or Interior affairs at that time?

Mr. C. I think Dr. Judd was—I will not be certain.

Mr. R. You say March this year?

Mr. C. February or March. I think it must have been February. I remember five ships had arrived when the canal was taken away.

Mr. R. How long had he been in that office?

Mr. C. I cannot tell—I do not recollect.

Mr. R. Are you sure he was not Minister of Foreign Affairs?

Mr. C. Yes.

Mr. R. Do you know who has got the original of that contract I have just read.

Mr. C. I do not know which of them this is.

Mr. R. Is this the original or a duplicate?

Mr. C. I did not notice.

Mr. R. Just look and be sure, if you please. Be sure that this is Stetson's hand.

Mr. C. I should think that this is the original, and that the duplicate is in the office of Ladd & Co.

Mr. R. Where is Mr. Stetson just now—I mean at the present time?

Mr. C. Probably in the United States.

Mr. R. Which of the States?

Mr. C. I cannot say.

Mr. R. When did he leave the islands?

Mr. C. I think he left before my return from the United States in 1843.

Mr. R. Do you know whether that contract had ever been Ladd & Co.'s?

Mr. C. The contract was virtually Ladd & Co.'s contract. I consider it so. Their money was paid for making the canal, and Stetson was their salaried agent, as I should judge from what I have heard in conversation and what is shown by their books.

Mr. R. What was the state of the canal account when Stetson left the country?

Mr. C. It was in debt; the books were passed into Ladd & Co.'s hands, and I cannot recollect how the account stood.

Mr. R. Cannot you make an approximation?

Mr. C. It had cost between twelve and fourteen hundred dollars at that time, and the receipts had been very small.

Mr. R. Do you recollect receiving a letter from Ladd & Co. dated the 1st of November, 1844, in relation to the proceeds of the canal?

Mr. C. Yes, I do.

Mr. R. I should like you to identify it. Have you got the letter? perhaps you have. Have you the letter?

Mr. C. I believe I have.

Mr. R. Is this a true copy of the letter? Whose handwriting is that?

Mr. C. I do not know.

Mr. R. Is not that your hand?

Mr. C. I think not.

Mr. R. Did not you pass it over to Dr. Judd?

Mr. C. Yes, but I think one of the clerks copied it.

Mr. R. Since, therefore, this comes from the witness, and purports to be a copy made by his clerk, I would like to give it in evidence. The letter is to this effect:

HONOLULU, November 1, 1844.

M. CALKIN, Esq.—We wrote you in great haste, requesting you to charge yourself with any and all things belonging to us in your hands. Our object was to make you secure for any monies we are owing you. We therefore include in the meaning of our instructions to you, per Pilot, for you to include, at a fair valuation, the income to be derived from the canal, and charge yourself therewith, and send us an account in full of your proceedings at the earliest convenience.

Truly yours,

LADD & CO.

(Signed,)

How was that letter sent to you, Mr. Calkin?

Mr. C. I do not recollect.

Mr. R. Do you recollect the vessel?

Mr. C. No.

Mr. R. Is that date coincident with the failure of Ladd & Co.?

Mr. C. That is the date of their failure.

Mr. R. And you say you did charge yourself with the goods in your hands, and the proceeds of the canal?

Mr. C. My clerk had done so previous to my arrival.

Mr. R. How came you to furnish that copy to those who might use it against Ladd & Co.'s interests?

Mr. C. Dr. Judd requested to know by what authority I held the canal, and I gave it.

Mr. R. Was there any motive at that time for giving it?

Mr. C. Nothing but to satisfy Dr. Judd. No farther motive.

Mr. R. Did not you on the 22d of December, 1845, receive a letter from Dr. Judd in relation to the canal?

Mr. C. I do not recollect.

Mr. R. Would you know it if you saw it?

Mr. C. I do not know that I should.

Mr. R. Perhaps you will look and see if this letter is not familiar to you. Please to read it and see if it does not recur to you again.

Mr. C. No, sir, I do not remember having seen it, but I might have done so. I recollect having this question put to me in person.

Mr. R. But do you not recollect to have received the letter of which this is a copy?

Mr. C. Yes, this is the document, I remember it.

Mr. R. I will therefore file it as a part of the series explanatory of the canal. [See Doc. Z. 2—App.] I give it in evidence as part of a connected series, and also to show that the agency here exercised on Dr. Judd's part was on behalf of Governor Young, and at his request.

Mr. T. E. What is the date?

Mr. R. The 22d of December, 1845.

Mr. T. E. The other is what?

Mr. R. November the 1st, 1844. Did you do as Dr. Judd requested you in that letter?

Mr. C. No, I did not. I did not give a detailed account, because the books were in Ladd & Co.'s hands, but I gave him a rough sketch from my books, informing him that it was not a correct account, but that in the course of time I would give him a correct one. My own books were not posted up at the time, and it was impossible for me to give a correct account.

Mr. R. Would you know those rough accounts again?

Mr. C. I suppose so.

Mr. R. Are those they?

Mr. C. This is not my handwriting or signed by myself.

Mr. R. Is this the paper you gave?

Mr. C. I do not know, I left it to my clerk to attend to as I was departing for Molokai at the time.

Mr. R. Does this look like your clerk's handwriting?

Mr. C. Yes.

Mr. R. Who was it?

Mr. C. I do not remember his name.

Mr. R. Was it Mr. Lindgrin?

Mr. C. No, sir.

Mr. R. Was it Mr. Lemoine?

Mr. C. No, sir.

Mr. R. It is one of your clerks, you think?

Mr. C. Yes.

Mr. R. You think this is the paper?

Mr. C. I cannot swear.

Mr. R. Does this exhibit the showing you made at that time?

Mr. C. I cannot tell, I left it with them to attend to. I wrote a hasty note while I was just about to embark for Molokai and told them to copy it for Dr. Judd, and I told him at the same time that it was a rough account.

Mr. R. Do you not know the name of the clerk?

Mr. C. No.

Mr. R. Would you know by the books?

Mr. C. Yes, but he is not in the country now.

Mr. R. This then is in the handwriting of one of Mr. Calkin's clerks.

Mr. T. E. That is not proved.

Mr. C. It looks like it, but I cannot swear to it.

Mr. R. I do not know, I think the circumstances are very strong. We have a paper which the witness admits to be in the handwriting of one of his clerks, about the canal, and he admits to have written a note with the showing.

Mr. T. E. I suppose Dr. Judd or some body else, whenever we get there, will be able to testify about that.

Mr. R. That can be proved; but it will make one continuous series to have it given in now. I want it for the purpose of exhibiting the rough show of the books of Mr. Calkin.

Mr. C. That is not correct, my books were not posted at the time.

Mr. R. You wrote about that afterwards, but this is the same rough showing. Did not you send it to Dr. Judd?

Mr. C. Yes, I believe I did.

Mr. R. I think I have a letter in your writing that alludes to the rough showing there. What did you say to him about it?

Mr. C. I do not distinctly recollect of writing to him on the subject.

Mr. R. You would know it when you saw it again? I think that is it.

Mr. C. That is mine.

Mr. R. Does that refer to the rough showing just handed to you?

Mr. T. E. What is the letter in question about?

Mr. R. About that rough showing you are holding in your hands.

Mr. C. That refers to a rough showing—I presume the one you have shown me.

Mr. T. E. What is the date?

Mr. C. The 14th February, 1846.

Mr. T. E. Now it seems more objectionable that this rough amount should be introduced. The letter itself states it to be erroneous.

Mr. R. The letter states that it was an error of excess. Here is the original, which I shall prove. If this is the rough showing, then this is to be diminished from it.

By the Board. You refer to the letter to prove the rough sketch.

Mr. R. Most certainly; but I will file the letter [see Doc. Z. 3.—App.] and reserve the rough sketch to be filed when I have proved it. (To witness.) Did you, subsequent to that letter, render a definite and correct account?

Mr. C. I came down to do so. When Dr. Judd declared his determination to seize the canal, I rendered my papers to Ladd & Co. for them to do it. I do not know whether they rendered him an account, but I asked them to do so.

Mr. R. The seizure of the canal has been mentioned. How do you mean?

Mr. C. He took it as Government property. He stated that Ladd & Co. had no right to it, and he meant to take possession of it.

Mr. R. Who was your clerk at that time, Mr. Calkin?

Mr. C. What time?

Mr. R. At the time of making out these rough minutes and this correspondence?

Mr. C. I had three. Lemoine was one, Lindgrin was another, and the third I cannot recollect. Mr. Lindgrin was not properly my clerk, I paid him a certain amount for keeping my books, or pretending to keep them.

Mr. R. Was Mr. Waldo your partner?

Mr. C. No, sir, he was consul.

Mr. R. Mr. Benson, then, was your partner?

Mr. C. No not at that time.

Mr. R. Do you remember saying to Mr. Lemoine, in regard to the canal, when he made out the account, this will not do, the canal is paying for itself too fast, and requesting him to alter it?

Mr. C. No, sir.

Mr. R. Do you remember coming to Honolulu in November or December, 1844.

Mr. C. In 1844. Yes, soon after the failure of Ladd & Co. I was down here. At the time I arrived in the night they were shut up.

Mr. R. In conversation with Mr. Ladd at that time, did you not gather from him that Mr. Brinsmade had failed in Europe?

By the Board. That is not a proper question.

Mr. R. To whom would that canal revert upon full reimbursement being made to Mr. Stetson?

Mr. C. It would revert to the Government when it had paid itself?

Mr. R. To the Governor?

Mr. T. E. To Mr Young, I think.

Mr. R. To Mr. Young is it? Did Capt. Stetson ever render an account of the canal to Government?

Mr. C. I am unable to say.

Mr. R. Do you think Capt. Stetson was bound to render such an account?

Mr. C. His lease bound him to it, of course.

Mr. R. Did you ever render any?

Mr. C. No, sir.

Mr. R. Do you not think that Dr. Judd would have paid you for repairs if you had rendered him a satisfactory account as you promised to do?

Mr. C. It was out of my power to do it, as the books were out of my possession.

Mr. R. But do you think he would not have paid you for the expenses if you had rendered an account?

Mr. C. No, I do not think he would.

Mr. R. Would he not have been obliged by the contract?

Mr. C. What contract?

Mr. R. Do you think he would have made any objection?

Mr. C. I cannot say.

Mr. R. Did you not think that the precedent action ought to have been yours or whoever had the canal?

Mr. C. I was here at the time and told Dr. Judd that I had come to give a correct account, but that Ladd & Co. had the books; and he declared his intention to take possession.

Mr. R. Did Ladd & Co. ever render an account?

Mr. C. I cannot say.

Mr. R. Did any body?

Mr. C. I do not know.

Mr. R. Did any body? I ask you if you know if any body did?

Mr. C. I do not know. I should have known if Ladd & Co. did. I made up my accounts to the 1st of January, but they were never called for.

Mr. R. There are some questions which the limitation put upon me by the Board has prevented my asking, because they are out of the field of the direct examination. If I understand rightly, Mr. Calkin designs to leave the jurisdiction of the court.

Mr. C. Yes, sir, I am so intending.

Mr. R. How soon?

Mr. C. Perhaps in 15 days; perhaps in 30.

Mr. R. I should wish to give notice that I am desirous of calling for some testimony from this witness at some future time, but not on this point.

Mr. T. E. I have said that you may take his evidence on matters without the field of my examination.

Mr. R. But if I do so you will not consider that I have introduced him.

*Direct Resumed.*

Mr. T. E. Have you got through your cross-examination? How long after Stetson finished the canal was it before he left the country?

Mr. C. I was not in the country when he finished it, and cannot say.

Mr. T. E. You don't know then when it was finished. Did you take possession of it after Stetson left?

Mr. C. Yes, sir.

Mr. T. E. Was Stetson here when you took possession?

Mr. C. No, he had been absent for near four months, I suppose. It had been going to decay when I took possession, and took over \$500 to put it in order.

Mr. T. E. How long were you in possession of it as agent or otherwise?

Mr. C. From about the 10th of February, 1844, to the 1st of January of the present year, or a little later perhaps.

Mr. Ricord. From February 10th?

Mr. C. About the 10th.

Mr. T. E. Till January, 1846?

Mr. C. Yes, sir.

Mr. T. E. During that time was Governor Young the Governor of the island?

Mr. C. Part of that time.

Mr. T. E. Did he live at Lahaina?

Mr. C. The first year he lived there. He was Governor of the island the whole of the time, and lived there about half the time.

Mr. T. E. Did he know that you had possession or occupation of it?

Mr. C. Yes, sir.

Mr. T. E. Did you hold it for yourself, or as agent for Ladd & Co.?



Mr. C. As agent for Ladd & Co. while I was their agent; when I was in business for myself I held it as security for the debt they owed me.

Mr. T. E. Did he ever have any conversation with you in regard to the ownership?

Mr. C. No, sir, not a word.

Mr. T. E. Did he ever say any thing about Stetson's going away and transferring the property?

Mr. C. No, sir.

Mr. T. E. Who in Lahaina is generally supposed to be the party holding the canal?

Mr. C. Ladd & Co., I suppose.

Mr. T. E. Did Ladd & Co. ever call upon you for an account of the proceeds?

Mr. C. No sir, never.

Mr. T. E. Up to the time the Government took the canal, as nearly as you can recollect, do you think the canal had paid for itself?

Mr. C. No sir, not within something near a thousand dollars, I should think, about that sum.

Mr. T. E. You said in answer to a question of Mr. Ricord, that you had several communications with the King, personally, in Lahaina, and that he talked with you on business matters; now, Mr. Calkin, when conversing with him on business matters, has the King at any time, or Premier, referred you to Dr. Judd, as a man who would attend to business for them?

Mr. C. Yes sir.

Mr. T. E. In what manner have they referred you?

Mr. C. I do not know whether it can properly be called business or not. I was talking about the number of grog-shops and intoxicated sailors, and I was referred to Dr. Judd.

Mr. T. E. How was that reference made, in what way do you understand it?

Mr. C. The business was in his hands and if he thought it was best for the Kingdom, he would act accordingly. As I said before, I tried to charter a vessel, and was referred to Dr. Judd, as he had charge of the vessels. I once tried to persuade the Governor to build a bridge over the canal, and then, also, I was referred to Dr. Judd.

Mr. T. E. What do you understand by all this?

Mr. C. That he was managing agent between the Government and foreigners, and had control over foreigners business with the Government.

Mr. T. E. In other words, he was a business agent?

Mr. C. Yes, a business agent.

Mr. T. E. Of Government?

Mr. C. Yes.

Mr. T. E. At the time that Swinton took possession of the canal, who was it ordered him to do so?

Mr. C. Mr. Swinton gave me information, that he had taken it by orders from the home department, I think.

Mr. T. E. That is all you know?

Mr. C. Yes.

Mr. T. E. Did you ever hear of any suit commenced against Ladd & Co. in that matter?

Mr. C. No.

Mr. T. E. Did you ever hear of any legal proceedings being instituted?

Mr. C. No sir. I had to send one of my clerks to take a copy of the notice, it was posted up against a tree.

Mr. T. E. But you never heard of any legal proceedings in that matter?

Mr. C. No sir.

Mr. Ricord. You say Mr. Swinton stated that he acted by orders of the home department?

Mr. Calkin. I think it was the home department, I will not say certainly.

Mr. Ten Eyck. You have said that for the last three years, you were a friend of Ladd Co.'s; now, in the last three years, have you been a friend to this Government?

Mr. C. Yes sir, as warm a friend of this Government as I have been of Ladd & Co.'s, to say the least of it.

Mr. T. E. If, Mr. Calkin, you wanted to get at the views and opinions of this Government, that is, of the King and chiefs, in regard to any important business affair with foreigners, whom would you be likely to apply to for the purpose?

Mr. C. In any secular business, I would go up to Dr. Judd, and in legal business, to Mr. Ricord.

Mr. T. E. If you were very solicitous indeed, to accomplish any particular thing, in which you wanted the action of the King, his signature, or any thing of that kind, to whom would you be likely to apply to get it?

Mr. C. I should be likely to apply to Dr. Judd the first of any one.

*Cross-examination resumed.*

Mr. Ricord. You say that Governor Young never called for any exhibit of the proceeds of the canal? Would it be natural for him to call? I ask you mercantilely, whether it would be likely for him to call or whether it was not rather the duty of those who had the proceeds, to make a return?

Mr. Calkin. The contract reads that they shall do so whenever called upon. I was never called upon until I received a note from Dr. Judd.

Mr. R. You did receive a note? In what capacity?

Mr. C. As agent for the canal.

Mr. R. Why did you not comply with it?

Mr. C. I held the canal for Ladd & Co., and in the proper course of things, passed the accounts to them. They hold the accounts in their own safe.

Mr. R. Did you pass the request?

Mr. C. Yes.

Mr. R. How long was that before the seizure?

Mr. C. Perhaps a month.

Mr. R. Where did Ladd & Co. keep their accounts of transactions, at that date?

Mr. C. I their own counting-room, I suppose.

Mr. R. In Honolulu?

Mr. C. Yes.

Mr. R. Where did Dr. Judd reside?

Mr. C. In Honolulu.

Mr. R. And Governor Young?

Mr. C. In Honolulu.

Mr. R. Are you sure you sent Ladd & Co. the request?

Mr. C. Yes, I sent them a written request, saying that Government wanted the accounts.

Mr. R. Do you know the motives that induced the seizure of the canal.

Mr. C. I was told by Dr. Judd that it belonged to Government more than any body else.

Mr. R. Do you know whether there was any motive that induced Governor Young or any other officer of Government to seize it?

Mr. C. Not more than I have already stated.

Mr. R. Do you know whether rumors had reached the home department that there were irregularities in the accounts?

Mr. C. No sir.

Mr. R. Did you hear it ever asserted that there were?

Mr. C. No sir. I have heard a rumor since to that effect.

Mr. R. That there were at that time. I ask whether you ever heard that there were rumors against the parties with whom the accounts of the court were kept?

Mr. C. I would explain that the contract reads that every ship shall pay two dollars, and I have received three dollars a ship, and I was in correspondence with Ladd & Co., to know who was to receive the dollars collected in that way. I was not going to give Government credit for them before I knew, and pay them out of my property. One of my clerks inimical to me set a report going about a false account.

Mr. R. By what authority was the three dollars exacted?

Mr. C. By precedent, I suppose; I first demanded five dollars,

but I found they would not pay that, and I afterwards put it at three.

Mr. R. How long did you charge three dollars?

Mt. C. All the time. Some ships would only send a boat in once, and some twice, but those that used the canal, paid three dollars.

Mr. R. Did you make up your account with the Government upon the basis of three dollars, or two?

Mr. C. My final account?

Mr. R. Any account you ever made up?

Mr. C. The Government have been credited with three dollars. It was decided by Ladd & Co., that Government ought to receive all that was paid.

Mr. R. How did you do when you received five dollars?

Mr. C. I only received five dollars for one ship, and that was credited to the Government.

Mr. R. You said that when you talked to the King on business matters, he referred you to Dr. Judd on several occasions, one of which, was on the subject of a license; was it a license to sell as an executioner?

Mr. C. No, it was about granting him licenses.

Mr. R. Then again you were referred to him, about the chartering a schooner, and then the building of a bridge. That was on account of the Governor. I want to know whether those are the description of things in connection with which the agency of Dr. Judd was exercised, such as constructing bridges?

Mr. C. Yes, things of that sort. Granting of licenses also.

Mr. R. What time was this?

Mr. C. In 1844.

Mr. R. What particular part of it?

Mr. C. All through the season.

Mr. R. What class of business should you call that? Would it come under the department of home affairs or foreign?

Mr. C. I never thought of classifying them.

Mr. R. But what class? Is it the class of business that Lord Aberdeen or Sir George Graham would attend to in England? Is it interior business or foreign?

Mr. C. Both foreign and interior.

Mr. R. Foreign in what respect?

Mr. C. With regard to regulations about ships.

Mr. R. I would like to know what classification it comes under? Do you call it foreign relations or domestic relations, which do you call it?

Mr. C. I cannot classify it, Mr. Ricord.

Mr. R. You say that Mr. Swinton gave notice to you that he had taken the canal—what is Swinton?

Sheriff.

Mr. R. What else?

Mr. C. Collector of Customs.

Mr. R. What else?

Mr. C. Prefect of police, I believe he acts in that capacity.

Mr. R. Do you not look upon him as a general agent of Government for Maui?

Mr. C. Yes sir.

Mr. R. Is he so now?

Mr. C. I am not able to say. He was when I left.

Mr. R. Do you know any other foreign officer in Lahaina? Do you know Dr. Tenant?

Mr. C. Yes, and there is another, there is an auctioneer.

Mr. R. You said, also, that you had been the friend of the Government for the last three years. In that time, I would ask you, did Ladd & Co. ever give you to understand that you could not be the friend of the Government and of Ladd & Co.?

Mr. C. No, I did not depend upon Ladd & Co. to guide me in those matters.

Mr. R. Did you not state so?

Mr. C. I never stated that, as coming from them.

Mr. R. Did you state it as coming from us?

Mr. C. No, I have said frequently that it would probably come to that, that if I had the name of being the friend of one, I should probably be considered as an enemy by the other.

Mr. R. From what cause did you say so?

Mr. C. From the evidence of my eyes, that the man who is not a friend of Government, is looked upon as an enemy.

Mr. R. Did you look upon Ladd & Co. as being inimical to the Government?

Mr. C. Not otherwise than that they wanted their rights.

Mr. R. Did you think you could not be a friend of both?

Mr. C. I would rather not be pushed too hard on that subject.

Mr. R. You stated Mr. Calkin, that if you wanted to effect any particular object, you would apply to Dr. Judd. Why?

Mr. C. On account of his having most influence.

Mr. R. How has he most influence? On account of their confidence in his wisdom?

Mr. C. Yes, on account of his wisdom and his skill—skill, that is the word, “akamai,” as they call it.

Mr. R. Do you consider that influence to be more than a good man should have in a Government? More than a good minister would have in Washington with the President?

Mr. C. Yes.

Mr. R. Suppose a man wanted an office in Washington, would he not be likely to apply for it through Mr. Webster, and through

but I found they would not pay that, and I afterwards put it at three.

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Mr. R. Do you consider that influence to be more than a good man should have in a Government? More than a good minister would have in Washington with the President?

Mr. C. Yes.

Mr. R. Suppose a man wanted an office in Washington, would he not be likely to apply for it through Mr. Webster, and through

his influence to procure it? And is not that the sort of influence you mean?

No. The natives are ignorant of business affairs and desire some one to manage their affairs with foreigners for them, and that is that man.

Did you ever know his acts to be overruled and set

I do not remember any instance now, but I am not probably a hundredth part of his acts. They may have been aware of it.

Did you not consider yourself as likely to succeed against the mentality of Mr. Richards?

?

He has had the management of the business of the King.

Do you think Dr. Judd acts with the authority or the command of the King, or that he relies upon his influence with the King and gets his consent afterwards?

Mr. Calkin. I should say through his influence that the act would be done. If I wanted to consult with the King or chiefs, I should go to Dr. Judd in the first place, and wait for the results.

Mr. Ten Eyck. Just to follow up that idea; suppose Dr. Judd if you apply to him for any particular purpose to be done through his influence, were to say I will do it, do you think it would be done.

Mr. C. Yes, I suppose he knows the mind of the King sufficiently to say so.

Mr. Ricord. I would like to put a parallel between the way in which a confidential clerk might serve you in your establishment, and the way in which Dr. Judd serves the King. Would it be the same as if you had a confidential clerk in your establishment, whose opinions you were known to confide in, and who might on some occasion say something to a customer with regard to something he wished to be done, would that customer have the same right to conclude it would be all right upon the assertion of that confidential clerk that the party transacting business with Dr. Judd, would have a right to suppose it would be all right with the King upon Dr. Judd's assertion?

Mr. Calkin. That would depend upon circumstances. If the clerk had been in the habit of signing notes and doing that sort of business, one would suppose his principal would be responsible.

Mr. R. Has Dr. Judd been in the habit of signing notes?

Mr. C. I do not know.

Mr. R. Have you ever had Government paper?

Mr. C. No.

Mr. Have you seen it?



Mr. C. Yes.

Mr. R. Who signed it?

Mr. C. I think I have seen some signed by the treasury board.

Mr. R. Who constitutes the treasury board?

Mr. C. I do not know.

The Court then adjourned until Monday, 7th instant, at 7 o'clock P. M.

TWENTY-SECOND DAY.

The court met at the hour appointed.

The Reverend Mr. Armstrong sworn to interpret, by Mr. Hopkins.

*A. Paki sworn by Mr. Hopkins.*

Mr. Ten Eyck. Mr. Armstrong, will you be kind enough to ask whether the King and principal chiefs of the Government have been made acquainted with the acts of Dr Judd on behalf of the Government?

Mr. Armstrong. He says they have heard.

Mr. T. E. Will you ask him whether, of his knowledge, the King and chiefs were made acquainted with the proceedings against Ladd & Co.?

Mr. A. He says I am one that belongs to the household, and what is done in the household, I have been acquainted with. They have heard of the proceedings in connection with that house.

Mr. T. E. He says then that the King has heard of the proceedings against the house of Ladd & Co.?

Mr. A. Yes.

By the Board. Do you mean the King's household?

Mr. A. Yes.

Mr. T. E. I understand he simply says he belongs to the household, but does he know that the King and chiefs have been acquainted with the proceedings of Ladd & Co.?

Mr. A. So far as he knows they talked of those proceedings and he knows what was done.

Mr. T. E. Will you ask him, Mr. Armstrong, if he knows what was done?

Mr. A. Do you mean done by Dr. Judd?

Mr. T. E. Done by any body concerned with Government, against Ladd & Co.?

Mr. A. He says they understood that there were certain debts. The King assembled them, the chiefs, and talked the matter over, and committed the work to Dr. Judd. That is so far as I can understand his meaning.

Mr. T. E. Certain debts due by Ladd & Co., I suppose.

Mr. A. He said certain debts.

Mr. T. E. Ask him if he means from Ladd & Co.?

Mr. A. He says I cannot say—he does not know.

Mr. T. E. Well, I do not want to know any thing about debts unless they are of Ladd & Co. It is connected with that house that my inquiries are made.

Mr. A. That is how he understood it, that they owed a debt to the Government.

Mr. T. E. He stated that there were certain debts owing to the Government by Ladd & Co., and that they had a meeting, and what then?

Mr. A. They conversed the matter over and committed the work to Dr. Judd whatever was to be done.

Mr. T. E. Committed the work to Dr. Judd's management as I understand?

Mr. A. He said gave the work to him.

Mr. T. E. Will you ask him whether Dr. Judd ever represented to the King and chiefs what he had done in the matter?

Mr. A. He says yes.

Mr. T. E. Will you ask him to state what Dr. Judd did report to them that he had done?

Mr. A. He said that the work they committed to him he reported to them.

Mr. T. E. Well, I want to know what that report was?

Mr. A. He repeats that the same thing which was given to him he did, and reported to them.

Mr. T. E. Well, now I want to know what he did report as having been done in reference to this affair of Ladd & Co., that is what I want to get at?

Mr. A. The amount of what he says is, that he does not know now what the work was that he did and reported, but simply that what work they gave him he did, and then reported to them, which amounts to the same thing.

By the Board. Does he understand the meaning of that word report?

Mr. A. Yes, he understands that, and he asks, what is the meaning of this?

Mr. T. E. The object is to get at the truth of the whole proceedings. Will he say then that he does not remember what Dr. Judd did report to the King and chiefs of what he did of those proceedings?

Mr. A. Some things he says are forgotten, and some are not forgotten.

Mr. T. E. Very well. Now the things that are not forgotten I want to know.

Mr. A. He does not seem to understand the object, I will state it to him again.

Mr. T. E. No, I do not care about that, I want him to answer my question, there is no need of explaining. He either knows or he

not know. If he knows let him state, and if he does not know say so. We are not going to explain every thing to him.

A. I confess it is very difficult to make myself understood. As he understood there were certain debts due to the Government Ladd & Co., and they conversed together and concluded to come matter to Dr. Judd's management, and Dr. Judd reported to what he had done.

T. E. That is what I want to know, what Dr. Judd reported done in regard to those debts. He either knows or he does

A. I can make another effort, but I have told him that be-

T. E. Let him say if he does not know.

A. There is one thing he remembers him to have stated, that he closed up the house, the store I suppose he means, but he not a house.

T. E. Did he tell them how he had done it, or what progress he had taken to do it?

A. He says he reported that the money was not paid, and more he had closed up the house.

T. E. Yes, but how, what sort of proceedings were taken to the house?

A. He says he told them the thing was done, but he did not the manner or process.

T. E. He did not state that. Well, then, all he knows is Dr. Judd reported he had closed up the store because the money not paid.

A. This is the amount of it. He did not see the premises, Dr. Judd said they were closed up. They committed the work to him, and he said that they were closed.

T. E. Am I to understand by that, that the house was closed, that the firm was closed?

the Board. Does he mean the store or the dwelling house?

A. He says that was my understanding, the store.

T. E. Well, ask him if Dr. Judd reported to them that any property of Ladd & Co. had been sold in favor of the Government, to the benefit of the Government?

A. He did not hear that that was the case.

T. E. He did not hear that any property had been sold. You ask him if he knows now if any of Ladd & Co.'s property sold to pay a debt due to Government?

A. I have not heard, he says; some of us may have heard, but have not heard.

T. E. Will you ask him if he heard that Ladd & Co. owned property on Kauai, any sugar plantation?

A. Yes.

Mr. T. E. He has heard that. Will you ask him if he has heard from Dr. Judd that that property was sold to pay the debts of the Government?

Mr. A. He has not.

Mr. T. E. Will you ask him whether the King and Premier have approved of the proceedings taken against Ladd & Co. by Dr. Judd?

Mr. A. He says they conversed on the matter and committed the duty to Dr. Judd, and that when it was done Dr. Judd returned and reported to them, and so far as he knows the King and Premier were pleased. "Maikai ka manao" are the words he uses.

Mr. T. E. Is that equivalent to an approval?

Mr. A. Yes, I should think it is.

Mr. Ricord. Mr. Armstrong, he says that the King and chiefs have always been made acquainted with the acts of Dr. Judd; ask him if Dr. Judd could do an act without the King's being cognizant and approver of it, I mean any important act of Government?

Mr. A. He says I am not acquainted with any proceedings of that kind, or I do not know any such proceedings as that, or, as he says, I have known his doing with the knowledge.

Mr. T. E. Does that mean with the knowledge of the King?

Mr. A. He did not put in the word King, but that is the meaning of the expression. I have asked him, and he says yes that is the meaning of the expression.

#### *Cross-examined.*

Mr. Ricord. Will you ask him whether Dr. Judd or any of the white officers, but Dr. Judd principally, has independent authority to do any act of his own free accord without their being previously made acquainted with it?

Mr. A. You do not mean at this time merely?

Mr. R. I mean in 1845.

Mr. A. So far as I can give your question, and give you the meaning of his answer, it is this, he does not so understand it, it is not so understood by him or others that his work is separate. It is by the understanding and co-operation of those who are over him.

Mr. R. How would you explain that? Ask him to explain that?

Mr. A. His expression is this, with their understanding.

Mr. R. Ask him if he has ever known the King to repudiate any of the acts of Dr. Judd in 1843, '44 or '45, before the present organization?

Mr. A. He has; but he says I do not recollect the time. He says he has done a work, and the King has afterwards said, "aole pono," not approved.

Mr. R. Ask him if he knows enough of the King's mind, being one of the household, to be able to say whether the King would con-

sider himself bound by any act or measure of Dr. Judd which he had not previously given his consent to?

Mr. T. E. I ask whether that comes within the scope of my direct examination?

Mr. R. I ask now whether Dr. Judd could obligate the King without his approval?

Mr. T. E. Nobody says he would.

Mr. R. I want to get the answer of the witness, inasmuch as it comes within the scope of the direct examination.

Mr. T. E. I will not argue the point; but I ask whether that comes within the scope of any questions I have put?

Mr. R. Let me show you. Your first question was, whether the King and chiefs knew of the acts of Dr. Judd, and he said yes. In the next place he was asked whether the King and Premier approved of those proceedings. And now taking those two things together, first whether he knew of those proceeding, and secondly whether he approved of them, I ask whether without that knowledge and approval the King would consider himself bound. I think that is entirely within the scope of the direct examination, if it is not I do not know what is.

Mr. T. E. It is merely getting at his opinion.

Mr. R. He says he is one of the household; if so he ought to know the King's mind. We have got nearer to the King now than ever before.

By the Board. What is your motive?

Mr. R. My motive is to show that if the King had not been acquainted with, and had not approved of the acts of Dr. Judd, he would not have been bound by them.

Mr. T. E. I did not say that if the King was not acquainted with, and that if he did not sanction Dr. Judd's acts he was bound. I could have told the gentleman that before.

Mr. R. But there is a vast deal on the record, showing Dr. Judd's acts, and that he was capable of doing certain things. But we do not allow that he could bind the King by his mere words. I want to test the witness' judgment. You will see that the book says I can test his judgment, and memory, and conscience.

By the Board. You may ask it.

Mr. R. Will you ask whether —

Mr. T. E. If the arbitrators will tell me upon what principle they have decided.

Mr. R. Ask him whether without the report of what he had done, and without his having approved of it, the King would consider himself bound? Whether if Dr. Judd should do a thing without that knowledge and approval it would be on his own head, that is to say a personal act?

Mr. A. Yes.

R. What means has he of knowing the King's opinion?

A. That is all he says he knows about it; that proceedings are secret are not understood as binding; it is such things as are that are considered binding.

He says, as I have got it here, that what Dr. Judd did to them. He reported that the money was not paid, and the house was closed. Does he mean that Dr. Judd re- himself had closed the store?

That what is clear to him is that Dr. Judd reported that the house was closed, but he has forgotten who closed it. He says, it was Boyd, he does not know certainly he says, he did.

In answer to a question of Mr. Ten Eyck, that whether he had approved of the proceedings against Ladd particular proceedings does he mean? Concerning the debt.

That the King was satisfied to get his money he was anxious to get his money again, at the idea?

Mr. A. Yes, that is the meaning.

Mr. R. Has the King ever felt sore about that money in such a way as would lead him to wish to get it back again?

Mr. T. E. I object to that.

Mr. R. I want it to be put upon the record that the King had lent the money for the benefit of Ladd & Co. and was very glad to get it back again.

Mr. T. E. I asked him whether the King and Premier had approved of Dr. Judd's proceedings against Ladd & Co., and I tried to get from him what those proceedings were, but he did not know.

By the Board. What is the object of the question?

Mr. R. The question is to ascertain whether the King's mind was turned towards that money. I want to know from a native chief what the King's mind was.

Mr. T. E. The question put was whether the King felt sore about the debt.

Mr. R. Will you ask whether the King was induced to approve of Dr. Judd's acts, and to approve of the sale, because he wanted to get back his money?

Mr. T. E. He does not know that there was any sale.

Mr. R. Then let him cross himself.

Mr. T. E. I insist that he shall not go on. I insist that there shall be a line drawn and that he shall be held to it. He is putting facts into the witness' mouth that he did not know were facts. He has sworn that he did not know that there was a sale here or on Kauai, now the gentleman puts this question, did the King want the money for which the property was sold?

By the Board. Then he may contradict himself.

Mr. T. E. He has not contradicted himself.

By the Board. Because he has not had an opportunity.

Mr. T. E. But I say he shall not have the chance.

Mr. R. But that is exactly in the scope of cross-examination.

Mr. T. E. Well, if you put it on that ground.

Mr. R. I read here from Peake's Law of Evidence, 188, that I might put a case which had never happened, and question him about things which never transpired, in order that he may cross himself. But I do not wish to impeach Mr. Paki, that is not my intention. It is a question that flows out of the gentleman's question concerning the acts of Dr. Judd. Those acts were not specified, and I will ask the witness, what acts were proved?

Mr. A. He says it is not clear to him.

Mr. R. He means generally the conduct of Dr. Judd was approved in regard to any measures?

By the Board. That will not do.

Mr. R. Does he mean that any acts of Dr. Judd were approved of, or what does he mean? Ask him to explain his meaning.

Mr. A. The closing of the house he says was approved of, that was clear.

Mr. T. E. That he has said before.

Mr. A. He made use of an expression—he said it was approved of because the time was expired for the debt.

Mr. R. Ask him about the King's approval, that is within the scope of cross-examination. Ask him when an important act has been done by the King, through Dr. Judd or any other officer, the King's approval was not given in writing?

Mr. T. E. I must object again.

Mr. R. Ask him whether in regard to Dr. Judd's acts affecting Ladd & Co. —

Mr. T. E. That is just like it—is not that the same thing? If he will prove there has been any directions in writing, I will allow it, but until that is proved I think it is out of the line of cross-examination altogether.

Mr. R. May I ask that question? He has asked him generally about the King's approval.

Mr. T. E. No, I did not, I only asked about Dr. Judd's acts in connection with Ladd & Co.

Mr. R. But that word approval has come into the matter and needs explanation.

By the Board. Ask him how the King approved.

Mr. R. I dare say he approved *viva voce*. Ask him whether the King expressed himself highly gratified and pleased and laughed about it, or whether it was a solemn approval?

Mr. A. He says it was a real approval.

Mr. R. Ask Mr. Paki if he is a chief, and what rank he holds?

Mr. T. E. Does that come out of the direct examination?

Mr. R. Yes, he says he is in the palace, and I want to know what rank he holds.

A. He says that is a delicate question to ask him, he is ashamed to answer it.

Mr. R. The object is to know the importance of the witness.

He says he is ashamed.

Mr. R. Did him Kekauonohu was not ashamed.

He says perhaps she was not ashamed, but I am ashamed.

Mr. R. He has given evidence here tending to show the power of the witness in these matters. Ask him if he knows any thing of Dr. Judd's

Mr. R. I beg your pardon, I did not ask any question about Dr. Judd excepting in regard to this matter of Ladd & Co., or not.

Mr. R. He said on the direct examination that the King and his council, committed the matter, that is to say the matter of Ladd & Co., to Dr. Judd to be performed without any specific instructions. Ask him if that was the usual course?

Mr. T. E. I do not recollect of his so having said.

Mr. R. No. Perhaps I have put that in then. I should like to know whether the King did not usually when he gave any thing to the Doctor to be done, give him with it instructions concerning it?

Mr. T. E. I want you to confine that question to this case.

Mr. R. I did not confine it to Ladd & Co.'s affair. It is important to me as bearing upon other things. May I ask it in that shape?

Mr. T. E. I do not object if he will confine the question to Ladd & Co.'s affair.

Mr. R. Then I will drop it.

By the Board. Will you ask him if he is not a Supreme Judge? In the law book he is put down as one of the Supreme Judges.

Mr. A. He says yes.

By the Board. And one of the House of Nobles?

Mr. A. He says yes.

On Mr. Stephen Reynolds being called to the stand, Mr. Ricord objected to him on the score of personal pecuniary interest.

By the Board. Would you like to examine him on his *voir dire*.

Mr. R. Yes, I should.

*Mr. Reynolds was then sworn to answer concerning his interest, by Mr. Hopkins.*

Mr. R. Have you any interest in the case now pending?

Mr. Reynolds. I am sure I cannot tell whether I have or not.

Mr. R. Do they owe you money?



Mr. Reynolds. I do not know whether they do or not. I have a book account which shows me in their debt a little.

Mr. R. Do you hold a mortgage on their property?

Mr. Reynolds. I cannot say. I have a parcel of papers concerning them which I never read.

Mr. R. Is there not an unpaid debt due from them to you?

Mr. Reynolds. Yes, there is.

Mr. R. How large is it?

Mr. Reynolds. I do not know that I am bound to tell. I am not come here to disclose my business.

Mr. R. I should like to know the amount of the gentleman's interest.

Mr. Reynolds. I say it is my own private business; but the amount whether it is one dollar or twenty thousand will not vary the principle.

Mr. R. I would ask whether I am not to inquire concerning the amount as in other cases?

Mr. T. E. If the witness has an interest, that will prevent him in law from giving evidence. I do not see that the amount can be of any importance, for a small amount will exclude him as well as a large one.

Mr. R. Is it secured?

Mr. Reynolds. I do not know. I have papers in my hands, but I have not looked at them.

Mr. R. Have they the means to pay you unless they recover under this arbitration?

Mr. Reynolds. I do not know—I think they have. I tell you what I think.

Mr. R. You think you would get your pay if they did not get any damages awarded to them in this arbitration?

Mr. Reynolds. I think so.

Mr. R. Have they got property?

Mr. Reynolds. I do not know, but I think I shall get paid.

Mr. R. Have you made any advance towards the payment of the expenses of this arbitration?

Mr. Reynolds. No.

Mr. R. Have you been security?

Mr. Reynolds. I have been, but it was withdrawn long ago.

Mr. R. Have you used your influence with any other person to get him to advance money to pay the expenses of this suit?

Mr. Reynolds. That question is impolite, and I tell you so Mr. Ricord.

Mr. R. I know no measure of politeness here. I do not call it polite, however, to get money out of other people's pockets in order that you may get money out of ours.

Mr. Reynolds. I tell you I think I shall get paid let the suit go which way it will.

Mr. R. I shall insist upon the gentleman not being received unless he releases Ladd & Co.

By the Board. He swears he has no interest in the suit.

Mr. R. But he says he has a debt owing. You know yourselves that all Ladd & Co.'s property stands pledged in view of the damages you may award them. The money they may get in exchange for their property is to come from us, and that is the money with which they are to pay their debts.

Mr. T. E. That is a curious doctrine that a witness cannot be sworn because he has a debt due him from one of the parties.

By the Board. Is not Mr. Reynold's a creditor?

Mr. T. E. This is the law, that a party who comes on the stand and swears that he has no interest in the case is a good witness.

Mr. R. I prove the contrary and make the broad assertion to the contrary.

Mr. T. E. You are not upon your oath.

Mr. R. Neither are you. You said that when a witness swears he is not interested he shall be received, and I say the contrary. This is a question of importance to us—one of whether he has an interest in the case.

By the Board. It is of no use arguing and perplexing the matter. He swears he has no interest.

Mr. R. I say so again.

By the Board. Will you not be richer in the event of their getting an award in their favor?

Mr. Reynolds. I cannot say, I do not base my expectations upon this decision.

Mr. Ricord. I can assure you that he is a very large creditor, and what can we hope for, if we are to have such creditors unsecured, brought upon the stand.

Mr. Reynolds. Yes, I have stated that I am.

Mr. Ten Eyck. Here is the question: Have you any vested certain interest in the result of this suit? If he answers in the negative, he is to be received. You have made him your witness.

Mr. Ricord. No, swearing him upon his *voir dire* does not make him my witness. It is done with a view to prevent his becoming your witness; it is to show that he is thrown out by law. The books show cases when a witness is ignorant of his interest, and say that he shall not be received. I really have felt a repugnance to the admission of so many witnesses interested in the result of the suit, and declaring that they would get paid from other resources. What the jesuitical reservation on such occasions may be, I do not know. Perhaps the witness says in his own mind, that he will forego his debt.

By the Board. How much do you think they owe you?

Mr. Reynolds. I do not see that it will throw any light on the matter if I answer.

By the Board. We put that question?

Mr. Ten Eyck. I do not like to discuss the matter with the arbitrators, but it seems to be unnecessary to put any question about his private affairs. He says they owe him, and it is the same principle whether they owe him one dollar or a thousand. It is merely an exposure of his affairs.

Mr. Ricord. Will it make no difference in the United States whether Mr. Reynolds is interested one penny or a thousand dollars? He might discharge the one, but his interest is enhanced according to the amount. I will come down here the next meeting, prepared to show that my principle is good in morals as well as law.

By the Board. We have no objection to his testimony being taken, if his interest be put down on the record. We should feel it wrong to send this evidence to an umpire, without having the amount put down, so as to qualify it.

Mr. Ten Eyck. He may state that they owe him five dollars.

By the Board. We want the whole of his balance.

Mr. Ten Eyck. I do not object to what the arbitrators say.

Mr. Ricord. I would like to have his interest stated. I want him to say the amount of their indebtedness, or I will prove it in the course of the examination.

Mr. Ten Eyck. Will you tell us what is the amount?

Mr. Reynolds. I cannot say exactly, but it is somewhere between eight and ten thousand dollars. If, as the arbitrators say, they want the precise amount, I must take three hours, at least, to find it out. I suppose, to guess at it, the nearest I can come, the obligation is about eight thousand five hundred dollars, more or less, to which the interest is to be added, and then there is a book account in their favor amounting to something like a hundred dollars, perhaps.

Mr. Ricord. I would like to know whether it is secured?

Mr. Reynolds. I do not know what you call security, and therefore, I cannot tell you. I do not know whether I have any security more than a note; there are some papers, and what they are, I do not know, I never have opened them since they were put in my hands.

Mr. Ricord. But in your estimation do you think you are secured?

Mr. Reynolds. To tell you what I think, might be as far from the truth as the north is from the south.

Mr. Ten Eyck. Do not let us have this desultory conversation, Mr. Ricord asks a question.

Mr. Ricord. I ask if he thinks the amount secured, and he says he does not think it is.

Mr. Reynolds. I had papers put in my hands by one of the firm, he said here are papers for you with a note for what we owe you, it is the best we can do. I took them and put them away in my iron chest, and there they have laid. I never opened them and do not

know the nature of one single paper, but this I think, that it was in the latter part of October, 1844, or very early in November. Whether they be good security or bad security or no security at all, is more than I can say.

Mr. Ricord. I submit gentlemen, to you, whether you will endanger us by sending before the umpire, or even allowing your own minds to become impregnated by the witness' testimony; whether you will allow evidence to be taken against us, of witnesses who state themselves to be in that condition, in regard to the other party.

*Cross-Examined.*

Mr. Ten Eyck. I suppose I have a right to cross-examine Mr. Reynolds. Mr. Reynolds have you any vested certain interest in the result of this suit?

Mr. Reynolds. I do not know that I have. I do not look to the result of this arbitration to get my pay.

Mr. T. E. Have you any legal interest in the event of this suit or arbitration?

Mr. R. Not being a lawyer, I should not be able to say. So far as I do know, I cannot see that I have.

Mr. T. E. Those are all the questions I have to put. I will read in reply to Mr. Ricord's remarks, what I put down when we discussed this subject before, in the case of Mr. De Fiennes. All that Mr. Ricord can make of it, is that it may effect his credibility, but not his competency as a witness.

Mr. Ricord. I will simply, in reply, state that I am here without my books, not presuming this contingency. The witness is one important to the other party, and one whose evidence we do not wish to go on record, for the reason of his interest. If you will allow me time to reflect, I will cite my authorities. The gentleman has read two or three sentences, got together on a former occasion.

Mr. Ten Eyck. I hope the arbitrators will strike them out.

Mr. Ricord. I can rebut those quotations.

By the Board. We will hear Mr. Reynolds' testimony.

Mr. Ricord. I simply wish to except to that decision.

*Mr. Stephen Reynolds was then sworn by Mr. Hopkins.*

Mr. Ten Eyck. Mr. Reynolds, how long have you lived on the Sandwich Islands?

Mr. Reynolds. I have lived on the Sandwich Islands since June, 1823.

Mr. T. E. Were you well acquainted with the present King and his predecessors Kamehameha the first and second?

Mr. R. I had but a slight acquaintance with Kamehameha the first, I had a great deal more with Kamehameha the second, and I have been intimate with the present King till within two or three years.

Mr. T. E. Do you recollect, Mr. Reynolds, when Dr. Judd took office under Government?

Mr. R. It was publicly announced, I think, in 1842, in the spring of 1842, in April or May.

Mr. T. E. Since that time who has been generally considered to be, and who has been held out to be, and who has acted as general confidential agent of Government in all its business with foreigners?

Mr. R. So far as my knowledge goes, Dr. Judd. What business I have done in any way with Government I have done with Dr. Judd.

Mr. T. E. What has been the general understanding amongst the foreign community?

Mr. R. Dr. Judd has been the man.

Mr. T. E. What has been the general usage, practice and course with foreigners, when they have had business transactions with the Government, to whom have they applied for the views and opinions of the Government?

Mr. R. So far as I know, from my own observation, and from hearing the conversation of others, Dr. Judd.

Mr. T. E. If any bargain or business arrangements were desired to be made with Government by any individual, with whom would those arrangements be negotiated?

Mr. R. To the best of my knowledge, Dr. Judd.

Mr. T. E. Were the public, by general usage and practice, accustomed to rely upon the statement and views of Dr. Judd, and were they considered as the views and statements of Government?

Mr. R. I have always considered so, and from the conversation I have heard through the village, I should think they were so considered by other people.

Mr. T. E. Have you ever known sir, that the King and native rulers here, have dissented from or repudiated Dr. Judd's acts as their agent, or have they so far as you know, uniformly acquiesced in, or tacitly consented to his acts and doings?

Mr. R. So far as I know, they have always assented or acquiesced.

Mr. T. E. In what light have you and the community, so far as you have known, been accustomed to view the express declarations of Dr. Judd, in regard to Government policy? How have they been considered generally?

Mr. R. I have always considered, and I should say to the best of my knowledge, the public have considered what Dr. Judd said to be of the highest authority, and no one would think of questioning it.

Mr. T. E. If he expressed views in regard to Government policy, and suppose that policy had not yet been carried out, should you consider it likely to be so?

Mr. R. I should say it would, to the best of my knowledge.

Mr. T. E. From your knowledge of his general powers and authority here, as general agent, would you suppose that his views in regard to Government policy, could be altered by any other foreigner?

Mr. R. Not by any other foreigner; I should think not.

Mr. T. E. It has been stated here during this examination; I do not recollect where it came from; whether from a witness or Mr. Ricord or otherwise, that no paper involving the King or Government had ever been signed by Dr. Judd or any one else, without the King's signature. Have you ever seen any paper signed by Dr. Judd or any body else, binding the Government without the King's signature—a note of hand, or any thing of that kind?

Mr. R. I have seen a note of hand signed by Dr. Judd and others, as members of the Treasury Board, but it was endorsed by the King and Kekauluohi, the late Premier.

Mr. T. E. Have you ever seen any paper of that kind without their signatures?

Mr. R. Nothing but one little thing, a due-bill, I believe, signed G. P. Judd.

Mr. T. E. Not a Government affair?

Mr. R. It might have been; I do not know whether it was or not.

Mr. T. E. Have you ever had any business transaction connected with Government that you have adjusted with Dr. Judd without the interference of the King?

Mr. R. I have done considerable business with Dr. Judd, but I do not know whether the King ever knew about it.

Mr. T. E. The question is, whether in the transaction of that business the King was referred to; whether his approval or consent was made a *sine qua non*?

Mr. R. Not that I know of. There were some accounts I settled with Dr. Judd soon after he came into office. He settled the King's account, and Haalilio's, and some others with me. I do not think the King had any thing to say, one way or the other. I was told that Dr. Judd would settle it, and I called upon him. The accounts that were first settled by Dr. Judd had been examined by Haalilio before he left the Islands, and on his return from Maui, the Doctor settled them. I also had some business with him under a power of attorney, in 1843. I spoke to Dr. Judd, and he said he never would listen to it, until it had been subject to the decision of referees or the verdict of a jury.

Mr. T. E. Who was it against?

Mr. R. Against the Government.

Mr. T. E. Was the debt settled afterwards?

Mr. R. Yes, sir

Mr. T. E. Who settled it?

Mr. R. Dr. Judd settled it.

Mr. T. E. You and Dr. Judd? Was the King's approval or any thing of that kind made a *sine qua non* in regard to the matter?

Mr. R. No sir. The Doctor told me that if I would call over, he would settle it with me. I will state that this was, probably, in consequence of the kind offices of Commodore Jones.

Mr. T. E. Do you recollect the sale of the Wilmington, and Liverpool Packet? Do you recollect when it was sold?

Mr. R. I do not recollect the day.

Mr. T. E. But you recollect the sale of the vessel?

Mr. R. It was one day early in December, 1844.

Mr. T. E. By whose authority was it sold?

Mr. R. I asked the auctioneer at the time, by whose authority it was sold, and Dr. Judd said by my authority.

Mr. T. E. What was that proceeding? Was it a proceeding on account of any of the authorities here?

Mr. R. It was sold in order to get the salvage.

Mr. T. E. Who was the salvor?

Mr. R. The Governor.

Mr. T. E. The Governor of this Island?

Mr. R. Yes sir.

Mr. T. E. In regard to any private transactions, any private debts with the King, has Dr. Judd ever interfered in those matters; ever assumed any authority over those debts or claimed them?

Mr. R. I do not know how far it might be called authority. He told me if I trusted the King and chiefs, it served me right if I lost my money. I asked for an interview with the King in 1844, which was granted; I went with Dr. Judd, and he had the bill. Dr. Judd arose and said that if I trusted the King and chiefs, I would lose my money, and if I wanted any body to dun them, I must look elsewhere, he would not do it.

Mr. T. E. What I want to know, is whether Dr. Judd gave you to understand that he had the funds to pay, and would, or would not pay, according as he thought proper.

Mr. R. Judging from his words, I should think he did. The bills have never been paid.

Mr. T. E. That, I suppose, goes to the balance?

Mr. Ricord. I would wish to say, there is a statute which makes that debt null, and confines the responsibility to the treasury board. It is not a balance, it is a claim.

Mr. T. E. If the Government repudiate their debts.

Mr. Ricord. They have not repudiated the debt. Not long ago they paid Mr. Reynolds a large sum.

Mr. Reynolds. They have not paid me any debt since you came into office.

Mr. T. E. Well, Mr. Reynolds, never mind. Are there any other acts that you recollect, as showing Dr. Judd's manner of doing business, his general agency in regard to Government matters?

Mr. Reynolds. I recently had some conversation with Dr. Judd about business; I offered to sell him all the property to which I have a claim, that is, all the landed property.

Mr. Ten Eyck. Was it a private affair?

Mr. Reynolds. He said he supposed he could negotiate it with me, but he should prefer my making some statement in writing, that he might lay it before the council.

Mr. T. E. I mean where he has acted independently?

Mr. R. I do not know that I have had any other business in which I could answer for the Doctor's having done so, unless it were in some very small way.

Mr. T. E. Mr. Reynolds, I would ask you this question. From the knowledge you have of the King and of the affairs of Government here, for the last two or three years, do you think the King would say or do any thing about business matters appertaining to the Government, without consulting Dr. Judd?

Mr. R. No sir, I do not think he would.

Mr. T. E. Well, sir, if Dr. Judd should express any opinions or views concerning business matters relating to the King or Government, would you consider the thing as fixed and settled on the part of Government?

Mr. R. If Dr. Judd made me any declaration, I should think it settled without going further, to any other person.

Mr. T. E. What sort of business?

Mr. R. With regard to public measures.

Mr. T. E. Measures of Government?

Mr. R. Yes sir.

Mr. T. E. Have you ever heard Dr. Judd say any thing himself, with regard to his own authority in regard to the business of Government? When he settled that business under the power of attorney, did he say any thing to you, showing what he considered his own authority and powers to be?

Mr. R. From the various conversations I have had with Dr. Judd at different times, particularly about the time of the cession of the Islands, I should think his feelings were that his views would be sustained by the King, in regard to business and policy, generally.

Mr. T. E. Were you acting as United States Consul here at any time?

Mr. R. Yes sir.

Mr. T. E. When?

Mr. R. I cannot tell all the times. From August, 1837, till December, 1838, was the longest period. Previous to that, I sometimes acted for one month, sometimes five months, and so on.



r. T. E. Do you hold any foreign appointment now?

r. R. Yes sir.

r. T. E. What is it?

r. R. Consul for the Free City of Bremen.

r. Ricord. May it please the arbitrators, I have a very wide  
 ide for cross-examination, and I am not prepared to enter upon it.

hour is late, and I should like time to prepare myself. I should  
 to know, however, whether I understand the proper scope of that  
 ination, by instancing a few points, for I desire to confine  
 elf to the field which the gentleman has opened to me. In the  
 place, he says he has been here since 1823; that, I suppose,  
 s the extent of time to which I may refer. Mr. Reynolds also  
 he had had acquaintance with the first, second and third Kame-  
 sha, trifling with the first, better with the second and intimate  
 the third. I suppose I may question him about that acquaint-  
 . Dr. Judd's appointment was published in 1842: I suppose  
 y introduce the published document to which the witness has al-  
 d. Then, again, he has said, that since that time Dr. Judd has  
 d as general, confidential agent of the Government, and has been  
 rally understood to be so: I suppose I may go into inquiries on  
 subject. He says that persons have generally applied to Dr.  
 J., as far as he knows: I may inquire into his knowledge, I sup-  
 ?

y the Board. You had better go on until 10 o'clock.

r. Ricord. I had rather not, it is a large field.

y the Board. If you do not proceed with the cross-examina-  
 with Mr. Reynolds, the other party may bring on another wit-

r. Ricord. Very well. You say, Mr. Reynolds, you have  
 here since 1823. In what capacity, what has been your par-  
 ar business?

r. Reynolds. Sometimes I have been a hired man and some-  
 s I have been doing business for myself.

r. R. When were you a hired man?

r. Reynolds. In 1826, 1827, 1828, and part of 1829.

r. R. What do you mean by being a hired man?

r. Reynolds. That I was hired and received wages.

r. R. May I ask from whom?

r. Reynolds. From William French.

r. R. Were you ever hired by, or have you ever received  
 es from the King?

r. Reynolds. No, sir, not to my knowledge.

r. R. What was the nature of your employment during that time  
 would entitle you to know the first, second and third Kameha-  
 sa?

r. Reynolds. That is carrying the thing beyond questions put

by Mr. Ten Eyck, because the old King died before 1823. I was not asked how long I had been acquainted with the islands. I said I came here to live in 1823. I had been here a number of years before. Now I cannot tell you how I became acquainted with Kamehameha the first since 1823, because according to history he died in 1829.

Mr. R. I did not say since 1823.

Mr. Reynolds. Let the question be this. In what way I became acquainted with Kamehameha? and I will answer.

Mr. R. Well, let it be so.

Mr. Reynolds. In those days, sir, the King was generally a constant visitor on board the ships. Now I was a sort of fancy man with my captain, and he made me coxswain of his barge or pinnace, and the King was in the habit of taking us to his house; and sometimes when I was there he would ask me if I did not want such or such a wahine, (woman) and that is how I became acquainted with him. If you want more I shall not give it. There was then no interdict between common people and majesty.

Mr. R. Was this the first King?

Mr. Reynolds. Yes.

Mr. R. How did he treat you?

Mr. Reynolds. I have told you.

Mr. R. How did you become acquainted with the second King?

Mr. Reynolds. By the same routine. When I was here in former voyages he was a youngster, and when I came here the last time he bought the vessel that I was on board. He came to look at her day after day and day after day till at last he got Kalaimoku and Kaahumanu to let him buy the vessel. Kalaimoku said if you want her get your makuahine to say yes, and you will have to go to Maui. No, said he, I want to go to Kailua. The King would not go round with us, he went another way, and sent the Cleopatra's barge to go with us. We arrived at night at 8 o'clock. Kaahumanu was there, and Kamualii, who had formerly been King of Kauai, and some other chiefs. He did not go on shore —

Mr. Ten Eyck. Let me interrupt. Please confine yourself to the question.

Mr. R. It will be interesting to have the events connected with Mr. Reynolds in that voyage recorded.

Mr. Reynolds. I will state that after the vessel was sold we came round the island that she should be delivered to the King in person, and I had several interviews with him between that time and his departure for England.

Mr. R. Let me ask you whether these Kings had got white men as counsellors or advisers? I mean Kamehameha the first and second.

Mr. Reynolds. Certainly they had. Mr. Holmes was a man greatly in the confidence of Kamehameha the first, and he was nomi-

nal Governor of the island, that is to say, he was Governor for foreign people to do business with.

Mr. R. Did you consider him a sort of agent or factor?

Mr. Reynolds. Whenever a ship came Mr. Holmes was applied to —

Mr. R. Did he act as interpreter?

Mr. Reynolds. No, he did not, for he was very indifferently versed in the language.

Mr. R. What were the qualities that induced the King to employ such persons?

Mr. Reynolds. You must ask them, I do not know.

Mr. R. When and how was Dr. Judd's appointment announced in April or May, 1842?

Mr. Reynolds. It was put in the little native newspaper the Kumu or Elele. I do not know which it was called at that time.

Mr. R. Do you recollect the nature of the announcement?

Mr. Reynolds. That he was appointed one of the Treasury Board and to do other business. I do not know that it mentioned that however. That he was agent, and all persons having Government property should carry it to Dr. Judd.

Mr. R. Well, was that in native or English?

Mr. Reynolds. I am not sure whether it was in both or not. I think it was in both.

Mr. R. You say you went to him to do Government business after that. To do or to talk about it?

Mr. Reynolds. Do you consider talking to be doing? First we talked about preliminaries, and afterwards carried them into execution if we could.

Mr. R. If you had a ship to sell would your conversation with another party about selling it be confined to the ship?

Mr. Reynolds. I suppose we should not talk about lunar observations.

Mr. R. You would not because you were authorized to sell a ship think you were authorized to sell any thing else? Well, you said that since 1842 Dr. Judd has acted as general confidential agent of this Government, and that such has been the general understanding.

Mr. Reynolds. Yes, to the best of my knowledge.

Mr. R. How do you know?

Mr. Reynolds. I know by my own transactions with him, and by conversation with people in the village.

Mr. R. Will you repeat some of those transactions?

Mr. Reynolds. No, sir, because that would be going into detail.

Mr. R. That is what I want you to do, to go into detail.

Mr. Reynolds. I have settled business with the Government on my own account, and also under power of attorney.

Mr. R. What was the nature of that?

Mr. Reynolds. Demands on the Government.

Mr. R. What other transactions have you had that give you the impression of his general agency?

Mr. Reynolds. His transactions in connection with the Liverpool and Wilmington Packet.

Mr. R. What year was it in—1845?

Mr. Reynolds. No, nor it wasn't in 1843.

Mr. R. Was it in 1844?

Mr. Reynolds. Yes, it was in 1844.

Mr. R. In what month?

Mr. Reynolds. In December.

Mr. R. What office did Dr. Judd hold at that time?

Mr. Reynolds. I am sure I do not know if he held twenty.

Mr. R. Will you give us the particulars of that transaction?

Mr. Reynolds. No, sir, I cannot, I have not got the documents here.

Mr. R. In whose behalf was it done?

Mr. Reynolds. Dr. Judd took it upon himself—I do not know who authorized him.

Mr. R. Did he act in connection with you?

Mr. Reynolds. He acted on one side and I on the other.

Mr. R. In what capacity did you act?

Mr. Reynolds. I was appointed by the master to be his agent.

Mr. R. Do you know if Dr. Judd had any special power of attorney under which he acted?

Mr. Reynolds. I never heard him say so.

Mr. R. Who appointed the arbitrators?

Mr. Reynolds. I do not know, sir, who appointed them.

Mr. R. Were there arbitrators appointed? Did you and the Governor enter into a stipulation to arbitrate?

Mr. Reynolds. No, sir.

Mr. R. Did it enter into arbitration or award?

Mr. Reynolds. I believe it did.

Mr. R. What was it?

Mr. Reynolds. To settle the salvage of the Government.

Mr. R. Who acted as the Government attorney?

Mr. Reynolds. Mr. Ricord and Dr. Judd.

Mr. R. As Government attorneys or attorneys for the Governor?

Mr. Reynolds. I do not know how they appeared. I did not see any papers that they had.

Mr. R. You stated that the salvor was Governor Kekuanooa. What was the share awarded to him?

Mr. Reynolds. Something over twenty-five per cent.

Mr. R. Was the award in favor of Governor Kekuanooa?

Mr. Reynolds. Yes, I think it was.

Mr. R. What were the transactions with regard to the oil and the

sale? Did any correspondence pass between you, the agent of the vessel, and Dr. Judd as agent of Kekuaraoa?

Mr. Reynolds. Dr. Judd and I had some little correspondence about the oil and about the ship.

Mr. R. Did you consider that a Government transaction?

Mr. Reynolds. I did. He said it was for the aupuni. I do not know whether it was. I considered it so then, and I do now, but I do not know whether it was or not.

Mr. R. Do you presume the papers will explain that case?

Mr. Reynolds. I should say the papers would speak for themselves.

Mr. Ten Eyck. The only objection I have to this is that it takes up time. I asked Mr. Reynolds if that vessel was sold, and he said it was; then I asked him if he inquired by whose authority the vessel was sold, and he said yes I did, and Dr. Judd said by my authority. I did not go further.

Mr. Ricord. But the evidence went to leave an impression that all his acts were acts of the Government, and I want the witness to state now whether that was an act of the Government?

Mr. Reynolds. How do I know?

Mr. R. You ought to know, you were agent for the whaler.

By the Board. He asks how he knows it was on account of Government?

Mr. Reynolds. I said I did not know, but I considered it so.

Mr. Ricord. I would like to give notice of my intention to file the documents to prove that point.

By the Board. You may do so in defence.

Mr. R. I can show the law that when papers are alluded to —

Mr. Ten Eyck. Now, just look at that. I think you are going beyond what you ought. I simply asked was such a vessel sold, and Mr. Reynolds said it was sold, and then I asked if he had inquired by whose authority it was sold, and he said he had, and Dr. Judd told him it was sold by his authority.

Mr. R. It was not the gentleman's interest to go any farther. The impression he wished to give was that it was one of the acts of Government done by Dr. Judd.

Mr. T. E. I disclaim any such intention.

Mr. R. Being unprepared I must of course go on and fill up the time which would otherwise be occupied by the examination of another witness to confuse me. You say that so far as you know Dr. Judd has been general agent of Government in all matters of business?

Mr. Reynolds. That is my understanding. A man comes in and says, I have been to Dr. Judd to do so and so. Capt. John Meek told me had been to Dr. Judd to hire land for his cattle. The land formerly belonged to Kekauonohi.

Mr. R. Do you know whether Dr. Judd does private business for Kekauonohi and others?

Mr. Reynolds. I do not know.

Mr. R. Do you know whether he did private business for Haalihi, and have you heard that he had private powers of attorney from any of the chiefs?

Mr. Reynolds. I never heard that he had.

Mr. R. Have you ever heard that the rents of the chiefs were paid to him for him to pay over to the principals?

Mr. Reynolds. I know that there was a public notice that all persons having leases should pay the rents into the Treasury Board.

Mr. R. Would that be apt to draw a great many people to the office of the Treasury Board?

Mr. Reynolds. I should go there if I had to pay.

Mr. R. Would it give the appearance of general business?

Mr. Reynolds. I think it might—I do not know.

Mr. R. You said that the public generally relied upon Dr. Judd's statements and conversations as coming from the King. What did you mean by that?

Mr. Reynolds. I believe I did not say that.

Mr. R. I have got it down so in my epitome of your direct examination. How did you say it?

Mr. Ten Eyck. The question was to whom did foreigners apply when they wanted to get at the views and opinions of Government?

Mr. R. You said that Dr. Judd's statements were taken as authoritative.

Mr. Reynolds. I said that to the best of my knowledge and belief, judging from what I had seen, and from the conversation of my neighbors, they were considered authoritative.

The Court then adjourned till Tuesday, the 8th instant, at 3 o'clock, P. M.

TWENTY-THIRD DAY.

*Cross-examination of Mr. Stephen Reynolds, continued.*

Mr. Ricord. You said on the direct that since April or May, 1842, Dr. Judd had acted as general confidential agent of the King. Was Dr. Judd an American citizen at that time?

Mr. Reynolds. I do not know when he took the oath.

Mr. R. Was he at that time an American citizen?

Mr. Reynolds. I do not know.

Mr. Ten Eyck. What time do you speak of?

Mr. R. I speak of the time when Mr. Reynolds says Dr. Judd took office.

Mr. Reynolds. I do not know any thing about that.

Mr. R. You said that so far as you knew, the public had been in

the habit of applying to Dr. Judd on all matters of business connected with the Government. Mention some acts which give you reason to draw that conclusion.

Mr. Reynolds. I mentioned last evening Capt. John Meek's applying to him for land, and I know that I applied to him in regard to some little matters.

Mr. R. Do you recollect when?

Mr. Reynolds. Not precisely—it was after Mr. Richards went away.

Mr. R. Do you recollect the reason of his applying to Dr. Judd? Did he ever tell you that?

Mr. Reynolds. I understood him because he considered him a head man.

Mr. R. Was it Government land?

Mr. Reynolds. I do not know whose it was, but I understood it belonged to Kekauonohi, but she did not rent it to Capt. Meek. Dr. Judd did if I understood Capt. Meek right.

Mr. R. Would the lease show that?

Mr. Reynolds. I never saw it, and cannot tell unless I were to see it.

Mr. R. I ask whether it would do so?

Mr. Reynolds. I cannot tell—it will speak for itself.

Mr. R. Did Dr. Judd hold a power of attorney of Kekauonohi?

Mr. Reynolds. I do not know.

Mr. R. There was another instance which you gave. What was that you mentioned about Capt. John Meek and some other? Who was that?

Mr. Reynolds. Mr. Robert Davis applied to him for the return of money paid for an auction license under the British Commission, but did not get satisfaction. Afterwards he applied to Commodore Dallas, and Commodore Dallas wrote to Mr. Hooper, and Mr. Hooper to Dr. Judd, and finally Commodore Dallas wrote to say that Dr. Judd did not intend to let the appointments under the British Commission stand.

Mr. R. What was it about?

Mr. Reynolds. About auction licenses given under the British Commission. Mr. Robert Davis took one at a hundred dollars a year, payable quarterly. A few days after the restoration those licenses were declared void, and Mr. Thompson went in for a short time as auctioneer, I believe, and Mr. Paty was one.

Mr. R. What year was this?

Mr. Reynolds. Immediately after the restoration.

Mr. R. In 1843?

Mr. Reynolds. It was between your arrival here in 1844, and the year 1842, so it must have been in 1843.

Mr. R. Did Dr. Judd hold the office of Minister of Foreign Relations at that time?

Mr. Reynolds. I do not know.

Mr. R. But I want to know.

Mr. Reynolds. Then ask Dr. Judd. Do not ask me about things I do not know.

Mr. R. But you pretended to ascribe certain powers to Dr. Judd and I want to ascertain what your knowledge —

Mr. Reynolds. If you want hearsay evidence I can tell you, but you asked what office he did positively hold, and I say I do not know.

Mr. T. E. That is an answer.

Mr. R. Let him go on, I want him to give all he knows.

Mr. Reynolds. How should I know I was never in the cabinet, and I never saw Dr. Judd's commissions excepting what I saw in this court. It is a common appellation amongst natives, however, when speaking of Dr. Judd, to call him kanaka aupuni.

Mr. R. I understood you to say that the statements of Dr. Judd and his conversations were generally relied upon as the statements and conversations of the King. Did I understand you right?

Mr. Reynolds. I said I understood from general reputation that the impression was that his acts would be sanctioned as having the good of the country for their object, and there was no doubt that what measures he proposed would be carried out if he urged them strongly. I heard him say so once myself. That is the substance of what I said, that Dr. Judd was considered as a general agent of the Government, and his representations received as coming from him in that capacity.

Mr. R. Will you please to describe a general agent?

Mr. Reynolds. I do not know that I can.

Mr. R. Well, what is your understanding of it?

Mr. Reynolds. I understand by it that a man may do what he pleases. For instance, if the King should tell me to go and do what I thought was right in regard to Government affairs, I should consider myself a general agent.

Mr. R. Did you know whether the King did give Dr. Judd such latitude?

Mr. Reynolds. I do not know—I have not seen any of his commissions.

By the Board. Do you recollect any of the commissions being made public?

Mr. Reynolds. The commission when he was appointed to sit in the British Commission was published.

Mr. R. Was his appointment as Minister of Foreign Relations published?

Mr. Reynolds. I believe it was published in some paper, the Friend, or the Kumu or Elele, whichever it was called at that time.

Mr. R. Was it published when he was appointed Minister of Finance in 1845?



Mr. Reynolds. I have seen a list of the officers with their names and ranks.

Mr. R. Do you recollect seeing Mr. Wyllie's name there?

Mr. Reynolds. I believe so, and that he was to take rank next after the Premier.

Mr. R. Did you see Mr. Richards' name?

Mr. Reynolds. I saw them all, I think, "By authority," in the public papers.

Mr. R. Do you understand—Mr. Reynolds, I am asking you a question that I would not put to every witness, but you have some little intelligence and I should like to have your opinion—do you understand that the loose conversations and general remarks of a general agent are binding upon his principal?

Mr. Reynolds. I would state that if I was a general agent, and any one came and conversed with me about particular business, and I gave him my assurances about it, I should think those assurances bound my principal.

Mr. R. Would you understand in that case that the assurance must be given to the party most immediately interested in it, or who would be most affected by it?

Mr. Reynolds. Why when a public man converses on public matters, he does not mean to deceive the public. So people suppose. From the dignity of his station he would scorn so mean an action.

Mr. R. But would he be so particular about what he might say in general conversations as when conversing on any particular matter connected with his duties?

Mr. Reynolds. That I cannot tell. I think I should be more particular, but I can only imagine what others would do.

Mr. R. Do not you remember that once when you had got a judgment against the estate of French and Greenway, Dr. Judd gave you his opinion that it was good?

Mr. Reynolds. Yes, he told me so in the street.

Mr. R. Has anybody else expressed a contrary opinion?

Mr. Reynolds. Yes, I think that Mr. Ricord wrote me a letter expressing a different opinion.

Mr. T. E. I object.

Mr. R. But it is allowed me to get some things from the witness which I consider necessary to my defence. He has given general testimony about the acts of Dr. Judd, and I am within the scope of that.

Mr. T. E. I never asked about French and Greenway's estate.

Mr. R. But I did. You put a question about any acts or statements that would show his authority, and the witness answered that there were several.

Mr. T. E. I say it is not a fair question. I did not ask any thing about French & Greenway.

By the Board. What is your object?

Mr. R. My object is to show that Dr. Judd's opinion was crossed by mine, and I now ask which prevailed.

Mr. Reynolds. I will say that Dr. Judd told me that a very short time since.

Mr. T. E. I do not want you to go further until the arbitrators have decided whether French & Greenway's estate is to enter into this question.

Mr. R. It has nothing to do with the question more than the Liverpool and Wilmington Packet has.

Mr. T. E. I insist upon it you shall not go on.

Mr. R. I should like to know how you are to stop me. Are you to be sole and everlasting Governor here?

Mr. T. E. Yes, I am to be sole and everlasting Governor here.

By the Board. What is the question?

Mr. R. The gentleman has asked about the Liverpool and Wilmington Packet to show the general agency of Dr. Judd, and I have asked a question arising out of the same answer of the witness. I am not bound to examine the witness in regard to the instances which he gave, the subject matter is the thing; I may bring in my own instances.

By the Board. This, as we take it, is a question of the general reputation of Dr. Judd, and you have a right to question the witness about the veracity of his testimony and how he comes to know it.

Mr. R. Will you allow me to argue it? According to the book I may suppose a case for the purpose of testing the witness' memory. How does the gentleman know but what I am supposing a case now, and yet he wants to stop me. He wants to rise and call out, it's all a supposed case; and how can I prove the witness' memory if the gentleman jumps up beforehand and tells him it is a supposed case?

By the Board. But now you want to show that Dr. Judd was not a general agent by their witness. You want to show that Mr. Reynolds' judgment was not considered to be what Dr. Judd said he thought it was.

Mr. R. I shall bring in those documents. It is not the fact that I want to prove, but the delusiveness of the witness' memory.

By the Board. If that is the case go on.

Mr. R. But you spoil my game. I protest against this as a violation of my rights and those of the King, and that I cannot do justice to the case of my client in consequence of these interruptions and disclosures.

By the Board. The same rule will apply to you.

Mr. R. But it may not be necessary. I may come here with an array of immaculate witnesses. I stand on the rule of law.

Mr. T. E. "The rule is now considered by the Supreme Court of the United States to be well established, that a party has no right to cross-examine any witness, except to facts and circumstances connected with the matters stated in his direct examination; and if he

wishes to examine him to other matters, he must do so by making the witness his own, and calling him, as such, in the subsequent progress of the cause."—Greenleaf on Evidence, sec. 445. That is all I want the arbitrators to hold the gentleman to.

Mr. R. I have confined myself within the scope of the gentleman's direct examination entirely. I am willing to come into any rule that the arbitrators may lay down. They have not decided that I may not take an instance about which the gentleman has asked no questions, or that I may not suppose a case.

By the Board. Mr. Ten Eyck will you read again what Greenleaf has to say.

Mr. Ten Eyck read again the entire of sec. 445, as last quoted by him, from Greenleaf's Evidence.

Mr. R. What I contend for is, that I may put questions with regard to matters about which the witness has been examined, and that is what I have been doing.

By the Board. He did not say any thing about French & Greenway. You may ask the witness concerning any thing about which Mr. Ten Eyck has questioned him.

Mr. R. That is within the decision of the Supreme Court of the United States. What was the matter of the direct examination? It was concerning Dr. Judd's general agency, and the gentleman extracted a series of instances bearing upon that matter. I am going to cross-examine him on those instances, but I have also some instances of my own which bear upon that matter.

By the Board. You are using Mr. Reynolds in your defence.

Mr. R. No, the matter is whether there are any statements of Dr. Judd's that show his general agency. I offered to sell him all my property, was an answer of the witness, which was a circumstance bearing or not bearing upon the matter. But do you not see a difference between the circumstances and the matter?

By the Board. Omit that question and put another.

Mr. R. If you order me to do so —

By the Board. We will think of it; perhaps you may put it by and by.

Mr. R. You said, Mr. Reynolds, that Dr. Judd settled the King's and Haalilio's and other accounts with you. Is that one of the evidences of his general agency, in your opinion?

Mr. Reynolds. It was either general or special agency.

Mr. R. I want to know whether that is one of the reasons that made you consider Dr. Judd a general agent?

Mr. Reynolds. That and many other little circumstances that turned up.

Mr. R. Will you be pleased to state who was the agent of Haalilio during his absence in Europe—I mean his private agent?

Mr. Reynolds. Dr. Judd always held out to me that he was.

Mr. R. Did you ever see his power of attorney?

Mr. Reynolds. I never saw any papers of his.

Mr. R. Do you know that Dr. Judd settled Haalilio's accounts?

Mr. Reynolds. I know he settled one with me. The day he left the islands Haalilio came into my house in the morning and stayed there, I remember, till he was sent for twice, and said that when he returned he would pay my accounts. There were also several family matters which he talked of which I do not think myself bound to mention.

Mr. R. Did you consider Dr. Judd as the private agent of Haalilio to settle his affairs?

Mr. Reynolds. I should consider him as such from his own representation.

Mr. R. I hold the power of attorney, dated July 8, 1842, showing that Dr. Judd acted for Haalilio in those matters and not for the King. If he acted under a power of attorney of that kind would it be a general or a private agency?

Mr. Reynolds. I should think you would not ask such a question.

Mr. R. But I want to have it put on the record.

Mr. Reynolds. If I had a power of attorney from Haalilio, (and he told me as much as that I should when he went away, but there was some smuggling no doubt,) I should have thought that I acted for him.

Mr. R. You said that under a power of attorney you applied to Dr. Judd for the settlement of some claim, and he said he would not settle it unless it were decided by arbitrators, or something of that sort?

Mr. Reynolds. Dr. Judd's words were, as nearly as I can recollect, "I never will allow it until I am compelled by the decision of referees or the verdict of a jury." That is what he said.

Mr. R. What was that account?

Mr. Reynolds. Claims upon Government.

Mr. R. What was the nature of them? Were they notes or book accounts?

Mr. Reynolds. They were obligations signed by the King and all the chiefs. I say all, but there were some five or six of them, more or less.

Mr. R. On that occasion did Dr. Judd say it must be referred to the King and chiefs?

Mr. R. He did not tell me so. He said I will not allow it unless upon the conditions which I before mentioned. I know that he did eventually settle it.

Mr. Reynolds. Did you ever see this law, Mr. Reynolds, which had been promulgated at that time? [48th Chapter of the English Translation of the Laws, p. 176.]

Mr. T. E. I object to that—I have not alluded to any law.

Mr. R. I want to know by what warrant the witness has made

his statement, and whether he made it having seen this law or not.

Mr. Reynolds. I do not know whether I had seen it or not.

Mr. R. It is a proclamation —

Mr. T. E. I object, and I insist that you shall stop until the arbitrators have heard my objection. As I said before, the gentleman is introducing this as evidence. Now it is very proper that he should introduce it as evidence, but he shall not do so here, this is not the time to go into his evidence. This is only a part and parcel of the effort that has been made all the time of making us the defendants and himself the plaintiff. Now I insist that if there is any rule by which he can be held, and the arbitrators have power to hold him to it, that he shall be held to it. That he shall not go into his defence until I have got through.

Mr. R. I will simply say that I am reading this law to Mr. Reynolds and not to the court. I will refresh Mr. Reynolds with it, and I want to ask him a question founded upon it, but until I have read it to him he cannot answer me.

By the Board. It is not proper.

Mr. R. He said that Dr. Judd had general agency, and he thought so partly because he refused to settle some accounts of the chiefs. Now here is a law, and I want to ask him in view of this law, whether Dr. Judd was not justified in saying what he did say.

Mr. Reynolds. That is taking an advantage over me —

Mr. R. I want to ask him whether in view of this law Dr. Judd could have given any other answer.

By the Board. That will come in very well in your defence. His ignorance of the law makes no difference in the case.

Mr. R. I will explain —

By the Board. It is exceedingly irritating to us to be constantly called upon to decide points about which judges themselves disagree.

Mr. R. I know that a witness' memory is often refreshed, and that he is asked questions upon his refreshed memory. If that law was in existence at the time, Mr. Reynolds has been allowed to answer in a way to prejudice us, and his answer has been spread upon the record. I am not apt to pop up and make objections. I am merely questioning concerning his memory and his means of knowing a thing. That is the object of cross-examination. You think that the objections you now urge will equally assist me when I come to be examining in chief, but you will imperceptibly find yourselves deciding with the gentleman when he goes round and cross-examines.

By the Board. Why?

Mr. R. His brilliancy will do it, and the wittiness of his remarks. Well, did not Dr. Judd say he would consult with the chiefs?

Mr. Reynolds. I told you that he said he would not allow it until it was decided by referees or a jury.

Mr. R. Did he ever tell you he would consult the chiefs?

Mr. Reynolds. I have told you three or four times.

Mr. R. Then let me know whether the business was not delayed a considerable time?

Mr. Reynolds. Not a long time—some few days.

Mr. R. Do you know whether Dr. Judd often had meetings with the King and chiefs on that matter?

Mr. Reynolds. I do not know that he ever had one, and I should doubt very much that he did. I do not know, but I doubt it very much, for the reason that the King was not here, he was on Maui, and Dr. Judd was here.

Mr. R. When was it?

Mr. Reynolds. In 1843.

Mr. R. What part?

Mr. Reynolds. Sometime in the summer or fall.

Mr. R. Cannot you be more precise?

Mr. Reynolds. I cannot without referring to the dates.

Mr. R. Can you be precise about the month?

Mr. Reynolds. No, I cannot. I know it was settled subsequent to my first application, and carried back to a certain date. It was settled between Dr. Judd and me. He came into my house and said I want you to come over to my room. I went over, and he said he wanted to speak to me about that business, for he supposed he might as well settle it, and asked what were the best terms. When I told him he asked why I could not abate something, and I told him I had a letter of instructions giving me my limits, and a power of attorney. He asked why I had a power of attorney and also a letter of instructions, and I told him that my power of attorney was my authority to accomplish the act, and my letter of instructions directed the way in which I was to accomplish it, and that I was very sorry a man in his high station should ask the question.

Mr. R. Was anybody present?

Mr. Reynolds. No, sir, I do not think there was.

Mr. R. Will you tell me who were the arbitrators in the case of the Wilmington and Liverpool Packet which you mentioned the other night?

Mr. Reynolds. William Ladd, George Pelly and John Dominis.

Mr. R. Who appointed them?

Mr. Reynolds. I believe Mr. Ricord had a hand in it.

Mr. R. What did they award?

Mr. Reynolds. I told you last night a little over 25 per cent.

Mr. R. Do you recollect what it amounted to?

Mr. Reynolds. I do not. I remember the Governor promised to pay me some money out of the sum awarded to him, and afterwards told me that he got a very small pittance, and Dr. Judd had taken the rest for the aupuni.

Mr. R. Was it necessary to sell any thing in order to satisfy that award?

Mr. Reynolds. I do not know what you call necessity.

Mr. R. Was there a sale?

Mr. Reynolds. There was a sale.

Mr. R. Was it upon that award?

Mr. Reynolds. Dr. Judd said I have ordered a sale, and I am responsible. I went down to the sale and asked three questions.

Mr. R. I give notice that I wish to file all the papers connected with that transaction, as it has been brought forward as a proof of the general agency of Dr. Judd.

By the Board. Cannot you get through without that?

Mr. R. I cannot, because it goes to qualify the evidence of Mr. Reynolds.

Mr. Ten Eyck. I certainly think the arbitrators ought not to receive any such evidence during the cross-examination of this witness. He is introducing it as evidence concerning that award and sale. I stated to the arbitrators last evening that no questions ought to be asked which do not arise out of questions put during the direct examination. What did I ask Mr. Reynolds? He cited the sale of the Liverpool and Wilmington Packet, and I asked him by what authority it was sold, he said I do not know, I went down and asked, and Dr. Judd said by my authority, I ordered it. I did not ask another question excepting who was salvor. Now Mr. Ricord is going to twist in the whole of that case in defence.

Mr. R. I am doing it in the cross-examination. The law says that when it becomes necessary —

By the Board. It may not be necessary. We are to judge of any proofs that you may wish to introduce. We cannot allow you to file it.

Mr. R. I should wish to have my exception to that decision noted. It is contrary to your own decisions, for you have allowed me to file documents.

By the Board. We did not know so much about it then as we do now.

Mr. R. There has been no debating, and therefore you do not know every thing now. Has there been any argument to show —

By the Board. We know that it is not necessary for you to file all those papers.

Mr. R. How do you know?

By the Board. We are not bound to say.

Mr. R. But would it not be better to let us know by what ration-  
cination —

By the Board. You had better go on.

Mr. R. I stand here in defence of my King. Never was a counsel under such circumstances so put down.

By the Board. You must not be impertinent to the court.

Mr. R. I disclaim all intention of being impertinent or wanting respect. (To witness.) How could you know the particular agency of Dr. Judd in the case of the Liverpool and Wilmington Packet?

Mr. Reynolds. That is a question I could not decide without a great deal of reflection, and getting opinions from books. If you ask me how I can decide for myself —

Mr. R. How did you arrive at that conclusion?

Mr. Reynolds. Because Dr. Judd was always saying that he was getting it fixed for the Government. That he took the money for the sale; and another thing — but am I to go into details?

Mr. R. The question is, how you knew the agency to be of the kind you stated?

Mr. Reynolds. I arrived at it in this way. I had a great deal of trouble with Dr. Judd, and a great deal with Mr. Ricord. I contended that the master of the vessel or his agent, or the owners or person acting for them, was the proper person to hold possession of the property, and not the salvor, provided he entered into obligations to secure the salvage. The award being made, I still contended that the master or his agent, or the owner or mate, as was usual in Europe and the United States, as I read, (and I had to sit up nights, too, to read,) ought to keep possession of the ship; and that there was no power in Europe or the United States that could take it from him but the Court of Admiralty, or the Vice Admiralty Court, or the sheriff or other officer named to have charge of the property; and that if the captain or agent refused to pay the demand, there must be an Admiralty process to oblige him to do so. And I arrived at the conclusion of Dr. Judd's general agency in that matter by his telling me what he was going to do, and because sometimes he would send me a note as G. P. Judd only, and sometimes as agent; and because when the vessel was sold he told me he took the responsibility upon himself. A special agent, I think, could not or would not take that responsibility upon himself. He said I am responsible. Dr. Judd was the purchaser, and afterwards he wanted to get up a whaling company —

Mr. R. That is out of the scope of my question.

Mr. Reynolds. No, I want to —

Mr. R. I desire the court to keep order. Am I to be insulted? I ask the witness a question, and in reply he goes beyond it, and then gets into colloquy with me, the counsel. Will you allow him to go on so? It is jeopardizing the \$378,000 at stake. Such proceedings make a picture truly ridiculous.

By the Board. Mr. Reynolds, will you confine yourself as much as you can?

Mr. Reynolds. I wanted to show how I came to consider Dr. Judd's powers to be what I have said, but I was stopped.

By the Board. There is no necessity, Mr. Ricord, to interrupt; he



evidence will only go for what it is worth, and there is no bias on our parts to —

Mr. R. I would fain think so. But I know that Mr. Ten Eyck stopped Mr. Thompson, and there was no fun or laughter then; but when I —

By the Board. If you will sit down we will explain. Mr. Thompson was going on too fast for the stenographer —

Mr. R. But this answer was beyond my question.

Mr. Reynolds. I would have stopped —

Mr. R. But you were not disposed to stop. Well, did you ever see the articles of arbitration in that case?

Mr. Reynolds. Yes.

Mr. Ten Eyck. Does Mr. Ricord want me to object? I did not ask a single question about that arbitration, and yet all that Mr. Reynolds has testified about has been on the subject of that confounded old arbitration.

By the Board. Let it go, Mr. Ricord. We want you to get it out of your head that there is bias on the part of the arbitrators. You are the cause of —

Mr. R. It has that effect upon my mind, and I have had my attention called to the circumstance that I stand here alone among partisans.

By the Board. This is indecorous.

Mr. R. You said on the direct that Dr. Judd said he had ordered the sale of that ship. Do you think he exceeded his powers in making that statement?

Mr. R. I can tell you what I think. I do not give any opinion, I only tell you what I think. I think that neither Dr. Judd, nor you, nor Kekuanaoa, had any authority, only what would be called arbitrary, without the consent of the master or his agent, and therefore I considered it an assumed authority—if that is the way you would wish to have it.

Mr. R. Did you ever say that the sale of it was illegal?

Mr. Reynolds. I have said that I considered it so, because I considered it an assumed authority.

Mr. R. Let me ask you again, is that one of the instances, according to your understanding, of a general agency on the part of Dr. Judd?

Mr. Reynolds. I consider it so.

Mr. R. Do you recollect the year?

Mr. Reynolds. I told you last night it was in 1844.

Mr. R. What time?

Mr. Reynolds. I told you last night it was in the early part of December.

Mr. R. Was it not the arbitrators who ordered that sale?

By the Board. We would not go on with that arbitration case.

Mr. R. That is true, I know it is a delicate matter.

By the Board. He was not asked any thing about the arbitration.

Mr. R. It weighs materially upon the facts which they want to prove by that witness.

By the Board. You can prove that in your defence.

Mr. R. It will be too late. If I understand the object of this part of the proceedings, it is with a view to bring Dr. Wood again on the stand, where he was, and have him answer a question which in the record stands at present unanswered. I objected to that question, and Mr. Ten Eyck said he would get it answered another way, although it would take longer time and more trouble.

By the Board. This is a separate point. You have a right to defend yourself upon it.

Mr. R. The question will arise whether Dr. Judd is authorized to make statements binding on the Government. I objected to the evidence of Dr. Wood as hearsay evidence.

By the Board. That exception will amount to nothing if it appears that Dr. Judd had no authority to bind the Government in that way.

Mr. R. They are trying to prove that he had, and with a view to have you understand whether Dr. Judd was —

By the Board. We protest against your using a man as your witness whilst you are cross-examining him. Either we know nothing at all, or else you are trifling with us. It seems like an insult to our understandings.

Mr. R. Will you explain what course I am to take? I am like an ass between two bundles of hay, and do not know which to choose. I arose the other night with a list of subjects to know whether I might ask the witness about them, and now you say I am making the witness my own. If you will tell me when we leave this room what particular questions to ask, I will put my questions accordingly; or otherwise, if you leave it to my sense to put my questions, I will do so according to the best of my knowledge.

By the Board. We do not care what questions you put, but when the other party objects —

Mr. R. But you say I do it to insult your understanding. I do not do so. I do it because I do not know better. I came here to learn from Mr. Ten Eyck, he came from Michigan and of course he can illuminate me. I stand here opaque and anxious to be illuminated. You said, Mr. Reynolds, that Dr. Judd told you that if you trusted to the King and chiefs you ought to lose your money?

Mr. Reynolds. He told me so.

Mr. R. Did he allude to the statute in this law book on that subject?

Mr. Reynolds. What he alluded to I cannot say, I only know what he said.

Mr. R. He did not say that statute was his authority?

Mr. Reynolds. He did not say any thing about authority—he did not qualify his remarks.

Mr. R. Did you not know of this law?

Mr. Reynolds. What? A law that I should not trust the King and chiefs? If you can show it to me —

Mr. R. This is the 48th chapter of the English translation. Did Dr. Judd allude to it?

Mr. Reynolds. He made a *bona fide* declaration without qualifying it.

Mr. R. Were people in the habit of consulting you on legal matters?

Mr. Reynolds. I do not know that they were, but they used very often to talk of law to me.

Mr. R. Did Dr. Judd tell you more than the law says?

Mr. Reynolds. I do not know that the law says I shall not trust anybody as an individual. I do not know that the law says to the contrary.

Mr. R. You said that Dr. Judd talked on that occasion as if he held the powers. Was he a member of the Treasury Board?

Mr. Reynolds. Yes, sir, I should say he was: it was in February, 1844.

Mr. R. Who acted as his associates—anybody?

Mr. Reynolds. I do not know who they were—John Li was one.

Mr. R. Did you apply to him for the payment of the King's debts as a member of the Treasury Board.

Mr. Reynolds. No, sir, by no means. I only asked him if I could go and see the King. When we got there Dr. Judd sat down in this way, with the account in his hand. "Well, King," he said, "the first thing is four military coats—who had them?" "I do not exactly know who had them." "Did you order them?" "Yes," said the King (*ae*). "Well, see who had them and make them pay." The next thing was some drilling for pantaloons, &c. I told him who had them. Amongst other things there was a piece of silk such as I never sold for less than fifty dollars, but I had charged it to the King for the Queen at forty-five dollars. The King said I ordered those things. Then Dr. Judd throwing down the papers in this way, and getting up, said, "if you trust the King and chiefs it serves you right if you loose your money." Will that do, Mr. Ricord?

Mr. R. I do not want you to stop. I want you, gentlemen, to bear in mind the manner and way in which he gave his answer, for it is impossible to have that taken down. (To witness.) What was the date of this interview?

Mr. Reynolds. I have just said February, 1844. Don't ask me again or I shall think you want to insult me or annoy me out of all patience.

Mr. R. That may be the case. You said that you offered to

Dr. Judd to sell all your property. Did he ever show you the instructions he received from the Privy Council in regard to the matter?

Mr. Reynolds. He did not say that he had received any instructions. He sent a note saying that my proposition would not be received unless I made an offer for a much less amount, and that nothing need be said about it.

Mr. R. Did he give you no warrant for making that reply?

Mr. Reynolds. He said that the matter had been discussed in council, or cabinet, or something. What he said first was, that if I said a certain sum he would close, but he would not like to close for what I asked until he consulted about it; and afterwards he wrote and said, your proposition has been before the council or cabinet council, as I said before.

Mr. R. When was this?

Mr. Reynolds. I do not know, but it was sometime after he took possession of part of my wharf. It was in the year 1846. I can tell you one thing, when he wanted me to put my terms on paper I stated that I should like to have the matter settled by the first of September. Therefore, I think it was not earlier than July or August. I got a communication from him some weeks or some time afterwards, so much so that I had not any further expectation of receiving any communication.

Mr. R. You said that if Dr. Judd should make any declaration or express any view or opinion with regard to the Government measures, you would consider it settled for the moment. Why for the moment?

Mr. Reynolds. Because I have been in the habit of seeing that what Dr. Judd proposed was done. I did not mean for the particular moment, but I meant that it was concluded for the moment, that is to say that it was settled.

Mr. R. Then you considered that it was settled?

Mr. Reynolds. Certainly.

Mr. R. Do you mean by that some particular transaction, as with regard to building a house or purchasing a horse?

Mr. Reynolds. I mean that if it was about building a house, or purchasing a horse or a ship, and I went to Dr. Judd and arranged the preliminaries, that it would afterwards be executed.

Mr. R. Do you mean also an official transaction?

Mr. Reynolds. I do.

Mr. R. Do you mean also to confine it to an official transaction with the party himself? Do you mean an official transaction affecting you, and about which he had conversation with you, or would his conversation with you affect somebody else—John Doe for instance.

Mr. Reynolds. If he said he was going to do a certain thing for the benefit of John Doe, or any thing of the kind, I should suppose it was going to be so.

Mr. R. From whom did you hold the United States Consulate in a part of 1837 and 1838?

Mr. Reynolds. From John Coffin Jones. I had held it for other terms, but that was the longest.

Mr. R. Have you ever held it from Mr. Brinsmade?

Mr. Reynolds. No, sir.

Mr. R. From Mr. Hooper?

Mr. Reynolds. No, sir.

Mr. R. Have you made any advances towards paying the cost of this arbitration?

Mr. Reynolds. I told you no last night, I tell you no now, and I will tell you no again.

Mr. R. Well, have you not said, Mr. Reynolds, that you would rather pay a thousand dollars than not have this arbitration to go on?

Mr. Reynolds. I have no recollection of having said so.

Mr. R. Have you said you would rather lose the whole of your claim than not have it go on?

Mr. Reynolds. I may have said that. I do not know. I have not said but little about it to any one. I may have said so. If I did it was for the purpose of having everything before the world, that it may be seen where the wrong is.

Mr. R. Do you solemnly swear that you have not aided in carrying on this arbitration?

By the Board. You can prove that in the defence.

Mr. R. It is a question touching his interest, and the other day Mr. Ten Eyck contended at great length, in Mr. De Fiennes' case, that I might go on to prove his interest in the cross-examination.

Mr. T. E. I did not say so.

Mr. R. Here is the record.

Mr. T. E. Then the record is wrong.

Mr. R. Then it ought to be corrected.

Mr. T. E. I do not want to see it.

Mr. R. If this record is wrong I do not know that it is a fair thing to make a decision upon.

By the Board. Will you read the commencement of the compact to arbitrate? We did not know that this arbitration would proceed in this way or we should not have undertaken it, and unless there is some different course adopted we shall not continue to act long.

Mr. R. I wanted to ask Mr. Reynolds about his religious tenets.

By the Board. If the case is to be defended in this way we must consider it is not a just one. In the commencement of the compact to arbitrate, it is stated that both parties are desirous for a settlement, but this does not look like it.

Mr. R. We are not in the defence.

By the Board. But you have got into it. We think we had better adjourn.

Mr. R. Mr. Reynolds do you believe in the existence of a God?

Mr. Reynolds. I shall not answer that question. I think it is impertinent for any man to ask another that question.

*Direct Examination Resumed.*

Mr. Ten Eyck. You stated, Mr. Reynolds, during the cross-examination last evening, that the Government, or rather the King of the Hawaiian Islands was indebted to you. Was that a fact?

Mr. Reynolds. Yes, sir.

Mr. T. E. Does he owe you now?

Mr. Reynolds. Yes, sir.

Mr. T. E. Have you debts due you from any of the chiefs of the islands?

Mr. Reynolds. Yes, sir, from Governor Kekuanaoa, from Pahi, from the late Governess of Kauai, and I have also a very small account against Governor Leleiohoku.

Mr. T. E. Mr. Reynolds, to come back to the simple question of Dr. Judd's agency, I will ask you for the sake of having it once more put down on the record, in what manner has Dr. Judd been regarded by the foreigners generally on the Sandwich Islands? I mean in reference to his general business agency connected with this Government?

Mr. Reynolds. So far as I can judge from conversations, and observations made in my hearing times without number, I should say he has always been so considered by the community.

Mr. T. E. Has that been your understanding?

Mr. Reynolds. Yes, sir, that has always been my understanding, and is now.

Mr. T. E. You stated that you had resided here about twenty-three years.

Mr. Reynolds. I have resided here twenty-three years last June. My acquaintance with the islands commenced before.

Mr. T. E. Have you resided here in Honolulu most of that time?

Mr. Reynolds. I made one short trip to Hilo and was gone seven days, and I have also been twice or three times to Maui.

Mr. T. E. Then with the exception of those few times you have been on this island twenty-three years?

Mr. Reynolds. I have not been out of sight of the island for the last twenty-three years.

Mr. T. E. During that time have you had intercourse with the native population?

Mr. Reynolds. Always.

Mr. T. E. Do you understand their character and capabilities?

Mr. Reynolds. I understand them a little, and but a little.

Mr. T. E. Do you understand any thing about their mental capacities for doing business?

Mr. Reynolds. Take some few that I have met with and they have good capacity for doing business.

Mr. T. E. I want your opinion in regard to the capacity of the King and chiefs of the Sandwich Islands during the last three years to transact business with foreigners. Has it been necessary or not to have such a man as Dr. Judd as general business agent of the Government? Could they have got on without one?

Mr. Reynolds. They would not have gone along in so systematic a manner. I think they would have been able to manage fairly, but not so well as they would with the assistance of a good foreigner.

Mr. T. E. Have they been obliged to have some foreigner to transact their business with their foreigners?

Mr. Reynolds. So far as necessity goes I think they might have done it themselves without any one. I think they are capable of getting along without —

Mr. T. E. The point is whether they understand the English language and the manner of doing business amongst foreigners sufficiently to enable them to transact business with foreigners without the aid of foreigners?

Mr. Reynolds. Do you mean domestic or political business?

Mr. T. E. I mean business connected with executions and sale of property, and advertisements and business of courts generally?

Mr. Reynolds. I should say yes they do understand to do their business with foreigners without the aid of foreigners. Years ago they did that, so far as my knowledge of things goes.

*Cross-Examination Resumed.*

Mr. Ricord. During the time you speak of had they only one agent?

Mr. Reynolds. During the twenty-three years?

Mr. R. No, during the latter part of it. In 1843, '44 and '45 had they only one agent for doing business with foreigners?

Mr. Reynolds. I do not know if they had twenty. Sometimes I did business with one man, and sometimes with another. Mr. Hart would come to me sometimes and say he wanted such and such things, and say I was to make out the bill against Government, or the Treasury Board, or Dr. Judd sometimes.

Mr. R. Will you say that the acts of agents during that time were binding upon the King? Do you suppose the King and chiefs had the privilege of reviewing their acts?

Mr. Reynolds. I can suppose such was the case.

Mr. R. And of controlling them?

Mr. Reynolds. I suppose they had.

Mr. R. Have the people generally waited for the confirmation of these acts?

Mr. Reynolds. In business? I am sure I cannot say. For my-

self I never waited to know whether it was confirmed or not if it was done through Dr. Judd, and I generally got my pay.

Mr. R. If it was not confirmed did you ever hear it?

Mr. Reynolds. I cannot say—these were mostly in little things.

Mr. R. Have foreigners been denied to go to the King and chiefs?

Mr. Reynolds. I have been denied to have access to the King and chiefs, except through Dr. Judd, to settle my affairs.

Mr. R. When?

Mr. Reynolds. In 1844.

Mr. R. Where? At the Palace?

Mr. Reynolds. It was not built.

Mr. R. Have you been to the King without any foreigner going with you?

Mr. Reynolds. I never went to the King on business without asking permission. I have been sent for; and I was once requested to go and see the Queen about some materials for her new house. I saw the King on that occasion. I said the Palace was not built in 1844, it was 1845 that I meant.

The witness was then dismissed, and after some desultory conversation the Court was adjourned till Saturday, the 12th instant, at 7 o'clock, P. M.

#### TWENTY-FOURTH DAY.

The Court met again at the hour appointed.

By the Board. Before re-commencing the examination, we wish to make a remark in reference to the manner and character of the proceedings which took place at our last session. We would state again here, most emphatically, that the sole inducement for our assuming the responsibility of this arbitration, and the important and unenviable duties attending it, was the honest belief, that it was really the sincere desire of both parties to amicably meet, and jointly and harmoniously elucidate the matters to be arbitrated upon, and quietly submit them to our disinterested examination and adjustment; and it was in this spirit, we accepted it, believing that any obstacle found in the way would at once be removed. But we confess, we have been most grievously disappointed. Not professing in legal phraseology to be a judicial tribunal, and neither claiming judicial respect, we sit here as mercantile men, expecting, and demanding the courtesy and deportment due to us as such, believing that we have not failed on our part, to manifest the same to all concerned in this cause. Instead of examining commercial transactions, we have been called upon to examine and decide upon abstract questions of law, and in place of adjusting claims and demands, we have, thus far, been asked to decide upon the legal admission of evidence, in accordance with the highest courts of justice, and to measure with exactness, the discrepancies of judicial decisions. This, though unexpected, is well enough, and pre-



is, proper enough, could we discover a sincere intention to amicable settlement instead of an apparently professional contention, for no other motive, that we can see, than improper prolongation and exercise; and this has been so strongly impressed upon us, that we have debated seriously with ourselves, since the last meeting, whether we ought not, in justice to ourselves, and from an apparent misunderstanding of the parties, in regard to our position, to resign. Before, however, taking a step that might be so important to both parties, we have thought it our duty, as a final means to promote the object in view, to exercise, to the fullest extent, the power we believe conferred upon us, and failing in this last endeavor to obtain order and facilitate the result, we shall most conscientiously retire from this arbitration. As a means to hasten the end of the proceedings, we have adopted as a rule, that any question of disagreement shall be submitted for our decision without argument, conversation, or interlocutory remark; either counsel taking what exceptions to such decision they please, and which shall be duly placed on the record. We feel obliged to state here that the attorney general at the last meeting, openly expressed a want of faith in our disinterestedness, and also failed in respect to which we consider ourselves justly entitled, and which we pass without censure and condemnation, would manifest, to say the least, a want of self-respect on our part, and which, we trust, will not again be repeated.

Mr. Ricord. I think it proper, gentlemen, to disclaim any intention to offend you or to wound your feelings. I have been solely intent on defending my client throughout this controversy. If my expressions have been hasty, I think too much stress is laid upon them. My remarks will be found generally, leveled more at the parties opposed, and the subject matter. Whenever I have taken exceptions to your decisions of legal points, it has uniformly been with a view to send the umpire abroad. I trust you see the propriety of exceptions being taken here, in order that the umpire may not conclude the parties to have waived the point decided, or to have acquiesced in the decision as made by you, and that he may look farther into it. I would prefer, if it is more accordant with the views of the arbitrators, to take my exceptions in the mass; that is, whenever a decision is given against my views, that the stenographer should enter up my objections without express allusion to it. I should like, however, the privilege of *not excepting*, for it would save trouble to the umpire, because if I waive some points, he would not, of course, examine them. Such has been my reason for open exception; it has not been from any motive to impugn you, or to convey the least particle of reflection. If you deemed it otherwise, I most certainly regret it.

Mr. Brinsmade. I feel it responsible upon me to say, that I am quite satisfied, that you, gentlemen, have determined to go forward in

the prosecution of the examination of this case, with the determination that you have arrived at, to conduct the matter in such a manner, as to prevent any obstacles, unnecessarily arising. I certainly have not, myself, intended, in any way to throw any obstacles in the way of arriving at the truth in this investigation. I have no other desire than to arrive at the truth in the shortest possible mode, and to bring out, in testimony, the facts necessary to support our claims, in the most economical manner possible. But I feel perfectly persuaded, that we are not likely to arrive at a conclusion. The power that is used against us may be perfectly irresistible on our parts. We have no money. It is perfectly well known that we have been deprived of our means of prosecuting a vexatious suit, and the enormous expenses, will, of necessity, oblige us to withdraw from the case, or consign it to the hands of those who can sustain this enormous expenditure. I had expected that we might have some notice of the decision, to have enabled us to prepare for this evening; but as I did not know what were your intentions, I am not prepared for the examination of witnesses to-night.

Mr. Ricord. I omitted to say that until this point is determined it will be necessary to go on and sum it up. After that I disclaim the least intention to throw obstacles in the way of my opponents, by raising questions, unless they are so loudly called for that I cannot help it. All small objections shall be avoided, that is, as I mean, when this point is terminated. The point now under inquiry is, *are the declarations of Dr. Judd to be received or not?*

Mr. Ten Eyck. On behalf of Ladd & Co. I feel called upon to make some remarks about the costs of this arbitration. I speak particularly of the expenses of taking down the testimony. I understood when this arbitration was entered into, that the object was to arrive at a correct conclusion respecting the rights of Ladd & Co. in this matter, and to ascertain whether they really had any claims or not; and the object of my advising them to enter into this submission was, that there might be an *amicable* settlement of the affair. I supposed the object and design of entering into this submission, was to get at the truth, in the quickest possible way, and with the least possible expense. Very well, we commenced the arbitration, and they (the arbitrators) appointed, as by the compact they were obliged to appoint, a clerk or some one to do the copying or to take the testimony. Well, they appointed Mr. Hopkins, but, unfortunately for Ladd & Co., they did not make a bargain at the outset. After we had gone on to some extent, it was found that the stenographer was charging about fifty dollars for every day's work. What is the object? Why, as has been avowed by the Attorney General, it is to vex, and harass, and, if possible, to drive Ladd & Co. from this arbitration; because, as the Attorney General well knows, they have not the means to advance for the payment of these heavy expenses. That, I repeat, has been the

vowed object. The gentleman has declared so, as I can prove by witnesses, and I can rely upon the source from which I got my information. I tell you, gentlemen, that this enormous expense was and is now used as "one of the weapons for defeating Ladd & Co.'s claims," and which the Attorney General of this Government intends to use to drive Ladd & Co. from the prosecution of their rights. Now, I insist that some different arrangement be made with regard to his expense. This stenographer is in the employ of Government, he is an officer of Government, paid a salary by Government. It is fair to presume that what he receives for his services here go to the coffers of the Government. The result is, that when Ladd & Co. pay their proportion, or half the extravagant expenses of the stenographer, they pay enough to meet the entire expense of all reasonable charges of this arbitration. The printing and stenography being both done by salaried officers of Government, the Government can well afford to make the expenses as large as possible, for they make money by the operation, and get it, too, out of the opposite party. Now, then, I ask, whether the arbitrators will drive Ladd & Co. to this alternative? The Government have stripped them of their property and deprived them of the means of prosecuting for their rights. They have no money to pay these heavy expenses. They come here bare of means, made so by the illegal acts of this Government, as they contend, and if they go to their friends to provide means for carrying on the case, the moment we introduce one of them as a witness, Mr. Ricord has him sworn on his *voir dire*, to testify to his interest in the case, and whether he has not contributed to carry on these proceedings. Now, then, I insist that some arrangement be made with some one beside Mr. Hopkins, unless this expense can be lessened in some way.

Mr. Ricord. I disavow any such intention as wishing to break down Ladd & Co. by these expenses. I disclaim having asserted so. You, gentlemen, yourselves know whether I have tried to increase the expenses. I have paid from my own pocket \$673 for printing. With regard to the expenses of stenographising, I expect my client to pay them equally with the other party. I am sued and am making a defence. The Government has no wish to embarrass Ladd & Co. The Government has put itself before you as answerable to Ladd & Co. for any amount they may claim, and they have claimed \$378,000. They have only to make that claim good. There is a compact between us that provides for the employment of a stenographer, and also for our bearing the expenses of stenography mutually. We stand ready to meet our proportion—we do not complain at all of the expenses. Make your own arrangements with the stenographer, he is a free man. He is not even in Government employ. Another gentleman, Mr. Lee, has been placed on the bench on purpose to relieve Mr. Hopkins, whose time has been entirely occupied in this business.

Were I a stenographer I would not discharge Mr. Hopkins' arduous and responsible duty for less. He is obliged to be intensely employed during the whole session of this court, amid all the confusion of debate, and the hubbub we often have, often quite enough to prevent him from receiving the speakers or witnesses remarks correctly. I have no objection to the expenses; in fact, I object to nothing, and I have come here to-night to acquiesce in every thing you may think proper.

By the Board. You are laboring under some mistake, Mr. Ten Eyck, as to our power to appoint or remove the stenographer. Ladd & Co. signed the compact under which we sit here; and before we knew any thing about it, they had agreed under that compact, with the Government, that we should appoint a stenographer, when it was notorious that Mr. Hopkins was the only one on the Sandwich Islands, or probably within ten thousand miles. The compact under which we act was, by its express terms, made a rule of Judge Andrews' court. We were to apply to him for aid when we needed it for the purposes of the arbitration, such as the summoning or the swearing of witnesses, and we supposed that the stenographer and sheriff, and all the necessary officers, would come from him, as there was no chance, as everybody knew, for us to employ any stenographer but Mr. Hopkins. We did not consider it necessary to make a bargain with him more than we thought it necessary to make a bargain with Judge Andrews about the cost of swearing in witnesses, or with the sheriff for summoning witnesses. We understood that the stenographer was a paid officer of Government, and that all the officers of Judge Andrews' court, the sheriff and Mr. Hopkins, were to be employed by us in their respective capacities without any agreement being made at all. It certainly could not be expected that we should have the right to appoint a stenographer, acting as we are under the compact, which says there shall be one, when it was well known there was but one to be found. We must either employ Mr. Hopkins or break up the compact.

Mr. Ten Eyck. I do not know that you could do otherwise. I do not find fault with the arbitrators for employing Mr. Hopkins. I know, and the parties knew when they entered into the compact, that he was the only gentleman upon the Sandwich Islands that could take short-hand minutes; but I supposed, and still think, that the arbitrators were empowered to make arrangements, for taking testimony, with the stenographer, just the same as they would with any other clerk. When we commenced this arbitration Mr. Hopkins was unwell, and we found that the testimony was as well taken, though perhaps not so fully, as since Mr. Hopkins has been here. I have nothing to complain of with regard to his vigilance and skill, or the truth of his report, for it is done as well, perhaps, as any other man could do it. But the thing is that he has it in his power to exact what price he chooses, and if the arbitrators pay him fifty dollars a night, they could

not say nay if he were to demand five hundred dollars a night. He may charge one as well as the other. It is certain that the charges are enormous, but if Ladd & Co. have to pay their part they will still go on as long as they can. But I repeat what I said before, that the Attorney General has said that this expense of stenography was one of the weapons which Government held, and that they meant to wield it, in the hope of driving Ladd & Co. from this arbitration. I repeat, that I know what I say, and I know from whom I received it.

Mr. Ricord. I simply rise to deny the gentleman's charge.

By the Board. We have endeavored to do all in our power to get the expense of stenographising reduced. We have done so by appealing to Mr. Hopkins. Mr. Hopkins is unwilling to do it less, and is willing to be released from it altogether, and we would say that his services are entirely given to the parties in this arbitration. Since the 28th of September (the time he was sworn for this duty, as appears by the record,) he has received nothing else whatever for his services; and if you take the average daily pay since that time, it will not seem so enormous as if you reckon for the few times that he has been employed here. It may be that hereafter some fixed pay may be agreed on with him for his services; and perhaps it was not known before that he was at the sole disposition of the parties.

Mr. Hopkins said that it was an office he did not like, for he was always more or less anxious, whether he was taking notes or having them transcribed, and that latterly it had been a rather difficult task on account of the disposition to be facetious, the effect of which had interrupted him a good deal, and he had come down that evening determined to ask the arbitrators whether in future they could not dispense with his services. And he added, that there seemed to be an impression that the Government could have ordered him to come there, or to go to this, that or the other place, but the fact was that his engagement with the Government had been for a specific purpose, and if they wanted him to do any thing else they must have made a new agreement with him.

Mr. Brinsmade said he would wish the arbitration to go on. He was not going to die so easily as they had thought. He was going to die hard, and not give up the suit till his means were exhausted.

Mr. Ricord. I would explain that in a conversation with one of the arbitrators about expenses, and particularly about printing, a remark was made that those expenses were very enormous, and I said, very well, parties must count the cost when they go to law. It was a remark made in private conversation, and whatever words may have dropped on such an occasion were not official but upon my responsibility as a private individual. I would embrace this occasion to say openly, that these gentlemen may find this proceeding very expensive, and if that is a reason for their withdrawing we cannot help it. If we have to pay some six or eight thousand dollars at the conclusion, I

shall be sorry. Persons often even gain their cases and are ruined. For my part I have spent \$673 from my own pocket for printing, and do not know that the Government will ever reimburse it, for I had no business to make that outlay.

After some further desultory conversation on the same topics, and on the manner in which evidence was to be taken in future, and such points of disagreement as might arise settled, the Court adjourned till Monday, the 14th inst., at 7 o'clock, P. M.

TWENTY-FOURTH DAY.

The Court resumed at the hour appointed.

*Mr. Stephen Reynolds re-called to the stand.*

Mr. T. E. Mr. Reynolds are you acquainted with the property that Ladd & Co. formerly occupied here in this town?

Mr. R. Yes, sir.

Mr. T. E. The store and ware-houses on the wharf?

Mr. R. Yes, sir.

Mr. T. E. Will you be so kind as to state what in your estimation that property is worth?

Mr. R. I have stated within a few days or weeks, perhaps two or three weeks ago, that I would be willing to give thirty thousand dollars if I could have time. I could not pay for it money down, but I do not know of more than one or two persons in the place who could.

By the Board. Do you mean that amount on interest?

Mr. R. Yes, sir. Give me time. I should want time because that is a large amount..

Mr. T. E. Do you state that as the value of it in your opinion?

Mr. R. I think, sir, that as other property is valued it is worth more than thirty thousand dollars.

Mr. T. E. What is your opinion of its value? that is the point.

Mr. R. I think, sir, it is worth thirty-five thousand dollars.

Mr. T. E. Are you acquainted with the property at Koloa?

Mr. R. I have not been on the island since the plantation was taken up.

Mr. T. E. Have you read the contract between Ladd & Co. and the King of the Sandwich Islands, called the contract of 1841? Have you ever seen that contract or read it?

Mr. R. I have heard it read—I never read it myself.

Mr. T. E. Could you give any idea of the value of that contract connected with the plans of the parties as you understood them set forth in the Belgian Contract?

Mr. R. It would be imaginary value.

Mr. T. E. I ask your opinion.

. R. In my opinion, to be connected with the Koloa plantation,

in the way I understood it, I should value it at several hundreds of thousands of dollars, that is, taking all in connexion.

Mr. T. E. Have you any means, Mr. Reynolds, of knowing any thing of the views of Government in regard to the Belgian Contract?

Mr. R. I have never had but very little conversation. I had a little conversation once or twice with Mr. Ricord about it, but not of any particular length. I remember conversing with him one day incidentally. He said that he had not seen the contract, but he had seen a copy, which he stated he saw through the politeness of Consul General Miller.

Mr. T. E. Did he express any opinions or views about it?

Mr. R. The impression on my mind was, that he meant to say that if there was a contract the Government must meet it and carry it out in good faith, or else evade it or shove it by.

By the Board. What contract did he allude to? That of 1841 or the Belgian Contract?

Mr. R. The Belgian Contract.

By the Board. It having been shown you by Gen. Miller?

Mr. R. The copy which I understood he had seen of the Belgian Contract was shown him by Gen. Miller. We happened to speak of it one day when I was in his room.

Mr. T. E. Have you had any other conversation with him or anybody else about it?

Mr. R. No, sir.

Mr. T. E. Were you conversing at that time particularly about the Belgian Contract?

Mr. R. Not when I went in. It was incidentally mentioned. The subject of the Belgian Contract was mentioned. What he stated was that he did not know there was a contract, for he had seen nothing but a copy that he had obtained from General Miller. I understood him to mean the Belgian Contract, but I do not know which he meant, he only alluded to it. The conversation was not directly upon it, only incidentally.

Mr. T. E. Have you any other means of knowing the views of Government upon it?

Mr. R. I have heard Dr. Judd speak once about it, and say that he thought there was a doubt whether it was a contract; but that was merely incidentally.

Mr. T. E. Have you ever heard Mr. Ricord or any other officer of Government say that the Government were called upon to fulfil it?

Mr. R. I talked with Mr. Wyllie a little while since. He said the contract was not thought worth a straw by the parties in Belgium, as he thought he could convince any reasonable man. But if they came on the Government was ready to put them in possession, or something of that sort. I did not pay particular attention to the words, but it meant that Government was ready to meet them.

By the Board. At what time did you speak to Mr. Ricord?

Mr. R. I do not recollect the time, but it was soon after Mr. Ladd had lent me a copy of the Belgian Contract which he had received. I think it was a short time after Mr. Richards arrived. I recollect making observations that the instrument seemed to be very perfect and drawn up by people well versed in that business—drawn up by people acquainted with technical terms.

Mr. T. E. In regard to the agency which we have been talking about, that of Dr. Judd in connexion with the Government, have you ever had any conversation with Dr. Judd or he with you, in which he has undertaken to control in any way your business matters?

Mr. R. There have been several conversations with him—sometimes he commenced and sometimes I—in regard to Mr. French's affairs. I made the observation one day that in my own country I thought I should stand a great chance, for in any State in the United States, or Europe, the courts would do me justice, and I should get heavy damages. Dr. Judd said, they would not sustain any suit for you. I asked him why they should be shut against me more than others? I asked him if I went to Hawaii or Kauai and commenced a suit against Mr. French, whether I should be barred? and he said, you will. I asked if I prosecuted Mr. French for a libel whether I should be shut out? He said: Well, suppose you prosecute and get a verdict, how are you going to get your pay? I replied, I should leave that to the Government, it would not be for me to say how; if I applied to the court it would sustain me if I got a verdict, I supposed. Well, you would get nothing. Conversations to that effect passed more than once between myself and Dr. Judd.

Mr. T. E. How did you understand that? Did you understand that that was authoritative what he said in regard to the matter, and that you were destined to be defeated?

Mr. R. I made up my mind so from the influence and authority which he generally used anterior to that, but subsequent to his having been appointed an officer of the Government.

Mr. T. E. How did he speak in regard to that matter; as if he had the authority to do as he pleased in the matter?

Mr. R. I should certainly infer so from his manner and words.

Mr. T. E. Did he refer in any of those conversations to any authority beyond himself—to the Governor or King—that they would not sustain you?

Mr. R. I mentioned about going to the other Islands, he said care will be taken, or I will take care, I do not recollect which, that none of the Governors will sustain any action for you against Mr. French. First he said any action for me, but afterwards he qualified, by saying against Mr. French.

Mr. T. E. Do you recollect the time when a whaling company was about to be got up here?



Mr. R. Yes sir, I alluded to it the other day.

Mr. T. E. At that time, what agency, or say in what manner, Dr. Judd interfere in that affair, or undertake to get up that company?

Mr. R. There were hand-bills or circulars printed, giving some the outlines of it. I got the most of my information from Capt. L.

Mr. T. E. I want to know whether Dr. Judd did exercise any authority on behalf of Government, when he undertook to take shares on behalf of Government?

Mr. R. He did so, to the best of my recollection, in the hands, and it was reported that Government would take so much stock, that the vessel which belonged to Government, would be turned at a fair valuation, and her repairs were to be charged at cost.

Mr. T. E. Did the plan succeed?

Mr. R. No.

Mr. T. E. Was the King here at the time; was he in this place absent?

Mr. R. I do not recollect. I think he was at Maui; but I do not collect precisely; I think he was at Maui.

Mr. T. E. Who bought the vessel when she was sold?

Mr. R. Dr. Judd.

Mr. T. E. For himself or the Government?

Mr. R. I understood it was bought for Government. She was sold moku of the aupuni, by the natives, after she was bought.

Mr. T. E. Now then, the question is, whether that vessel having been bought by Dr. Judd for the Government account, was he instrumental in trying to get up this company, and did he offer to put the vessel in?

Mr. R. That is always what I understood.

Mr. T. E. You do not know whether the King was here then or not?

Mr. R. Part of the time, I think not; about the time that the company was first started, he was not here, because it was just after the session of the Supreme Court in Lahaina.

Mr. T. E. Have you a judgment against Mr. Greenway?

Mr. R. Yes sir.

Mr. T. E. Have you ever made any attempt to arrange that matter with Dr. Judd?

Mr. R. I have asked him about it once or twice.

Mr. T. E. Why did you apply to him?

Mr. R. Because he was the man I had always applied to, and he often had conversation with me upon and about it. He was the one to give me information that the British Government had sanctioned the proceedings of the court here.

Mr. T. E. Did Dr. Judd ever attend to settle that affair with you?

Mr. R. Once, some where in 1844, when I had occasion to call on him, he was then laid up with ophthalmia in his eyes or something of that sort. In the course of my being there, he brought forward Messrs. French & Greenway's business, and told me there were arrangements about being made, that a certain person or persons would advance to the Government a certain amount of funds sufficient to clear off all French & Greenway's debts, and named Mr. Pelly as one, and with regard to the money belonging to Mr. Greenway's estate, then deposited with, or in the care of the British Consulate, that as soon as they got that money they should settle this execution.

Mr. T. E. They should. What did they mean by they?

Mr. R. He said we—he used the third person.

Mr. T. E. What did you understand?

Mr. R. I understood that he and Mr. Ricord would do so.

Mr. T. E. Was Dr. Judd personally interested in that matter, or was it a Government affair?

Mr. R. I should suppose it was a Government affair.

Mr. T. E. What did he mean about the verdict and judgment, and about paying over this money?

Mr. R. I understood him to say it would be paid over. He said settle the execution.

Mr. T. E. In what manner did you understand the money was to be paid, or who had charge of the money, the Government, or Dr. Judd individually?

Mr. R. The money was in the hands of the British Consulate, and was going to be paid over to the Government.

Mr. T. E. And they would pay you?

Mr. R. Yes, that is how I understood it.

Mr. T. E. At the time of this conversation with Dr. Judd, did he send for you to come and see him about it?

Mr. R. No, I went there on other business. I do not know whether he broached the subject, or I; but we had a very long conversation, all very pleasant, and he told me what was in preparation about the funds being advanced, or placed in the hands of Government.

#### *Cross-examined.*

Mr. Ricord. Mr. Reynolds, you said that the place down there by the water-side was worth \$30,000; do you mean that you were willing to give that price?

Mr. Reynolds. I said I had said I would give that, if I had time allowed me.

Mr. R. Did you mean clear of incumbrances?

Mr. Reynolds. Clear of incumbrances, of course.

Mr. R. Not \$30,000 over and above the incumbrances?

Mr. Reynolds. By no means; I meant for the property free and clear; as the value of the property, not of the incumbrances.

Mr. R. How much do you suppose you should have to give?

Mr. Reynolds. If I said \$30,000, I suppose I should have to pay \$30,000.

Mr. R. I mean with the mortgages?

Mr. Reynolds. I do not know.

Mr. Ten Eyck. I object to that.

Mr. Ricord. The question was in regard to the value of the property, and I thought proper to see what the incumbrances upon it were.

Mr. Ten Eyck. I spoke simply of the value of the property and not of the incumbrances.

Mr. Ricord. Then you mean exclusive of incumbrances, Mr. Reynolds?

Mr. Reynolds. Clear of every thing.

Mr. R. You said, Mr. Reynolds, you had a conversation with me in regard to the Belgian Contract, and that I had told you that I had a copy of it?

Mr. Reynolds. I said that you told me you had not seen the contract, all that you had seen was a document furnished by General Miller.

Mr. R. Did you say that was a copy of the Belgian Contract?

Mr. Reynolds. No, I said I did not know whether it was a copy of the Belgian Contract, or of the contract of 1841. I said you did not say which particular contract it was that General Miller had had the kindness to lend you.

Mr. R. What did I say in regard to it?

Mr. Reynolds. I understood you to say that you did not know there was a contract, but that if there was, Government must either meet it, you supposed, or else evade it or something of that sort. I told you I did not know much about it.

Mr. R. What had taken you there?

Mr. Reynolds. I do not recollect particularly, some little incident. I have often been in the habit of calling.

Mr. R. Was this a casual conversation?

Mr. Reynolds. It was.

Mr. R. Did you go then with powers to question me about it?

Mr. Reynolds. I have just told you it was a casual conversation.

Mr. R. You said you had several conversations with Dr. Judd, (speaking of his agency) and in one of them, he told you that the Government would not sustain any suit in your behalf against Mr. Greenway's estate; when was that?

Mr. Reynolds. I cannot tell the day.

Mr. R. What year?

Mr. Reynolds. It was soon after the second assignment by Mr. French, of his property, as appears in the public prints.

Mr. R. What assignment? Do you mean the last one?

Mr. Reynolds. The last one, to the court of Kekuanaoa, the one in September, in 1844.

Mr. R. Do you recollect to whom this assignment was made?

Mr. Reynolds. I understood it to be to the Governor or Judge.

Mr. R. To the Governor? Do you know the person through whom it was made?

Mr. Ten Eyck. I have not asked any questions about that assignment.

Mr. Ricord. Upon what did Dr. Judd predicate his remark, that you would be barred?

Mr. Reynolds. I did not say any particular reason, but from his manner, I supposed it was from prejudice.

Mr. R. From prejudice?

Mr. Reynolds. Yes sir.

Mr. R. Was Dr. Judd the proper officer at that day, to know any thing about that affair?

Mr. Reynolds. I do not know whether he was or not; I know we had the conversation.

Mr. R. Had I any agency in that business?

Mr. Reynolds. Yes, I suppose you had a sort of agency.

Mr. R. About the whaling company; do you recollect the object of that company?

Mr. Reynolds. I suppose it was to prosecute the whaling business.

Mr. R. Was it a joint stock company, open to subscriptions from every body?

Mr. Reynolds. Yes sir, I understood so.

Mr. R. Who got it up?

Mr. Reynolds. I understood Dr. Judd and Mr. Paty and one or two others. They talked about getting the Liverpool and Wilmington Packet, and fitting her out to go whaling.

Mr. R. Did they propose to buy her?

Mr. Reynolds. I understood she was to be put in as part of the Government stock, so I understood from Capt. Pell.

Mr. R. Do you know whether the treasury board did not subscribe to a certain number of shares in that company?

Mr. Reynolds. I understood from Capt. Pell that Government were to be concerned, and own part of the stock. He told me outlines of the plan, and I told him I thought it much better for him to go home. Afterwards he told me he was rejoiced that he was out of that scrape.

Mr. R. Did you hear the subscription list?

Mr. Reynolds. No sir.

R. Do you know whether there was one?

Reynolds. Only from report. Capt. Pell told me he should have many shares, and his mate would take shares. He did not know to what amount, he wanted to know first what his voyage would cost and buy shares accordingly.

R. What year was this?

Reynolds. In January, 1845, I think it was. Capt. Pell did not live here till the last of December, or early in January, and the 7th of February.

R. When did Dr. Judd give you the information of the action of the British Government in regard to Mr. Greenway's affairs?

Reynolds. Very few days after General Miller arrived.

R. When was that?

Reynolds. In February, 1844.

R. What did he say to you?

Reynolds. He said a good deal, and finally read me a paper very nearly like the words in the Polynesian of last Saturday, to the effect that the British Government had sustained this Government in all the proceedings in court.

R. Did he call on you or did you call on him?

Reynolds. He called to me as I was passing in the street, and spoke to me from the verandah. I went up, and after some little conversation, he mentioned that circumstance, and read about the case in Mr. Charlton's case.

Ten Eyck. Was this conversation with Dr. Judd individual or as secretary of foreign affairs. Was he secretary for foreign affairs at that time?

Reynolds. I do not know whether he was or not. He was engaged in the business.

R. Was he the medium of communication with foreign governments?

Reynolds. I should suppose so from the letters to Sir George Phipps, published over his name in the Polynesian. I should take it for granted.

R. When was this that Dr. Judd and you had the conversation in which he told you that funds were going to be advanced? In what way was that?

Reynolds. In 1844.

R. Did he tell you how?

Reynolds. He said there was going to be placed at the disposal of Government, a certain amount, I think \$50,000, and that Government was going to pay off or settle up all the claims against French and Greenway's estate, and that they were going to give Mr. French's property as security for the payment, and said I should tell you and Mr. Ladd will have no objection. I told him when I should call my claims or security, I should have no objection.

Mr. R. Was the Government responsible at all for Greenway's affairs at that time?

Mr. Reynolds. I do not know that they were responsible any farther than that the court had taken jurisdiction, and pronounced judgment and issued executions. I do not know that they were responsible in any other way.

Mr. R. When were those judgments pronounced; before the provisional session?

Mr. Reynolds. Yes, the one against Mr. Charlton and myself.

Mr. R. What responsibility, then, was there on the part of Government?

Mr. Reynolds. I do not know that there was any.

Mr. R. Was it not, in fact, an act of kindness on the part of Dr. Judd, to you, or any body, who had a lien on that estate, to inform you what was in preparation?

Mr. Reynolds. I do not know whether it was kindness or otherwise.

Mr. R. Was it not feeling an interest in you?

Mr. Reynolds. I cannot tell what his motives were, I am sure.

Mr. R. Has that estate ever gone into the hands of Government even to this day?

Mr. Reynolds. If you consider the courts a part of the Government, and the public prints any criterion to judge from, I should say yes; But if the courts are no part of Government, and the advertisements in the public paper, of no avail, I should say no.

Mr. R. What assets had Mr. Greenway, independent of what was lodged with the Government?

Mr. Ten Eyck. I have not gone into this.

Mr. Ricord. It seems to me that in a private matter touching Mr. Judd, it is fair to you, yourselves, to know that it is a private matter and has nothing to do with Government.

By the Board. That you will do very well in your defence.

Mr. Ricord. Very well. You say, Mr. Reynolds, that he said we will settle, and you understood by that, Mr. Judd and I. What was that?

Mr. Reynolds. That was in July, same time, same place, same room.

Mr. R. I do not know that in the restricted latitude of my cross-examination, it is of very much use to probe the memory of the witness; but all these things can be made perfectly clear to you afterwards, I suppose in their proper place, and therefore I have no more questions that I care to ask.

*The Reverend Lowell Smith having been previously sworn by Mr. Andrews, was called to the stand.*

The witness examined by Mr. Ten Eyck.

Mr. Ten Eyck. Mr. Smith, how long have you resided on the Islands?

Mr. Smith. I arrived here on the 1st of May, 1833.

Mr. T. E. Have you lived here ever since?

Mr. S. Yes sir.

Mr. T. E. In what capacity have you been residing here, Mr. Smith?

Mr. S. As minister and missionary for the native population.

Mr. T. E. Mr. Smith, will you state who has been generally considered, and who has been held out to be the general confidential agent of the Government, in their general business transactions with foreigners?

Mr. S. Since my arrival?

Mr. T. E. Yes sir, or within the last three or four years?

Mr. S. My impression has been, ever since Dr. Judd left the American Board and American Mission, that he has been the business agent.

Mr. T. E. When did he leave the mission, sir, as near as you can recollect, without being particular?

Mr. S. I think it was in the spring, in April perhaps, of 1842. I am not positive about the month.

Mr. T. E. In the spring of 1842?

Mr. S. I think that was the time, just before our annual meeting, which occurred, I think, in May.

Mr. T. E. Some time in the spring of 1842, will do very well. Since that time, you have considered him the general business agent of Government?

Mr. S. That has been my understanding.

Mr. T. E. What was the reason given when he asked for his dismissal from the mission?

Mr. S. He did not ask for any dismissal.

Mr. T. E. It was not necessary then. I supposed that it was necessary. In arriving at the views and opinions of the King and Government upon business matters, generally, to whom has it been usual to apply?

Mr. S. I have not had much business with the King or Government, very seldom; but my impression has been that business people have applied to Dr. Judd.

Mr. T. E. In order to arrive at the views and opinions of the Government, in business matters?

Mr. S. Yes sir.

Mr. T. E. So far as the mission is concerned, or rather the missionaries here, so far as you know, of their general course of dealing with Government, who have they been in the habit of going to to get the views of Government, or to transact their business with?

Mr. S. So far as our secular agents are concerned, I am under the impression, to Dr. Judd.

Mr. T. E. The business, then, of the mission, is conducted by the secular agents?

Mr. S. Yes, we, as a body, have seldom any thing to do, except through them.

Mr. T. E. When did you first hear, Mr. Smith, the Belgian Contract first spoken of; about what time?

Mr. S. I do not know that I can begin to remember about what time.

Mr. T. E. Was it in 1843 or '44?

Mr. S. Sometime whilst Mr. Brinsmade was in Europe, and after he had written back here about it I heard people talking about it.

Mr. T. E. Do you recollect who you heard talking about it first?

Mr. S. I recollect that several of us missionaries talked about it some, and I heard some people in town make some remarks, but I cannot call any definite conversation to mind now.

Mr. T. E. In what light was it generally viewed by the mission?

Mr. S. I have heard several of our number, I think, say they thought it would not be very favorable for Government if it should go into operation.

Mr. T. E. Have others had other views?

Mr. S. Others of the mission?

Mr. T. E. Yes, sir.

Mr. S. I do not know, sir, I have not heard all of our number speak on the subject.

Mr. T. E. Have you any knowledge of the views which were taken of it by Government?

Mr. S. I have not, sir; I have never conversed with them on that subject.

#### *Cross-Examined.*

Mr. Ricord. I think you said, Mr. Smith, that the secular agents of the board regarded Dr. Judd as general business agent of the Government?

Mr. S. I said that so far as the transactions of the mission were concerned, I believed that since Dr. Judd came into office our agents had transacted business with him.

Mr. R. But do you understand the import of that word general agency? Will you say they have done general business with him? Do you understand the drift of that word general agency as used by Mr. Ten Eyck?

Mr. S. He transacted the business of Government, I suppose, in the name of Government.

Mr. R. To what extent with the mission?

Mr. S. Not very important business; such as chartering vessels and sending freight from island to island.

Mr. R. You said that several members of the



Belgian Contract would be unfavorable to Government if it went into operation. Do you know if they ever saw the Belgian Contract so as to be able to form an opinion of that fact? How did they form that impression?

Mr. S. I heard them say they had read it.

Mr. R. When was this?

Mr. S. Since there was a copy in the place—since Mr. Brinsmade returned.

Mr. R. Which of them has said so?

Mr. S. I do not know that I had better mention their names.

Mr. R. I would simply like you to mention their names since they are specific individuals, and I would like them to serve us on the direct.

By the Board. What is the motive?

Mr. R. To test the memory of the witness.

Mr. S. I think I have heard Mr. Castle, Mr. Armstrong, and perhaps Mr. Hall say it would be unfair—that it would be unfair if it went into operation.

Mr. R. Did they say they had seen it?

Mr. S. Mr. Castle had seen it, I think.

Mr. R. Which do you mean?

Mr. S. I am not positive that they said they had seen it. I heard them talk about what was in the place, but I do not know that either of them said they had read it. It was after there was a copy in the place.

Mr. R. Did you ever see it?

Mr. S. I never read it. I have seen a document in the hands of others, but I never read it. I have heard extracts read, and since this arbitration commenced I have read it, but not before.

Mr. R. Have you ever expressed an opinion about it?

Mr. S. Perhaps I have.

Mr. R. What was that opinion?

Mr. T. E. I have not asked his opinion.

Mr. R. I ask his opinion as founded on that of others. I simply ask his opinion.

Mr. T. E. I have no objection, of course, to his opinions.

Mr. S. Sometimes perhaps I have expressed an opinion without having heard the document. When I heard the document the other day, I thought it was an able document, and drawn up by those who knew what they were engaged in.

Mr. R. What else?

Mr. S. Whether, if carried into effect, it would injure or benefit the nation I cannot tell.

Mr. R. What is your opinion? I ask in fairness to Mr. Armstrong and Mr. Hall and Mr. Castle, since you have given their opinions.

Mr. T. E. Perhaps they can give Mr. Smith's.

Mr. S. If ever they have heard me express my opinion I am willing they should declare it.

Mr. R. Cannot you?

Mr. S. I have not much opinion about it.

Mr. R. Did you ever hear it said that the Government would not carry out the Belgian Contract?

Mr. S. Yes, I have heard it stated that Mr. Ricord did not mean to have it carried out if he could avoid it.

Mr. R. Who said that to you?

Mr. S. I would like to know whether I am obliged —

Mr. R. It is not hearsay—I am asking on the cross.

Mr. T. E. I did not call any thing of that sort out.

Mr. R. The question is, whether he has heard that the Government would not carry out the Belgian Contract? The witness says he has heard so—that he has heard that I said so.

Mr. R. What is your opinion with regard to the non-carrying out of it.

Mr. S. My opinion is that they do not mean to carry it out.

Mr. R. Upon what is it founded?

Mr. S. From the course this arbitration has pursued from the commencement up to this time?

Mr. R. Is this arbitration then with a view to carry out the Belgian Contract.

Mr. S. On one side I think it is.

Mr. R. The witness has given an opinion with regard to the Government's not intending to carry out the Belgian Contract, and has used my name. Now I urge that in courtesy I may be allowed to extract what he means, because I have never given any one to understand but what the Government were ready and willing to carry it out in full up to the 13th July, 1846. It is so stated in the pleadings.

Mr. T. E. The reason why I object to the question is this. Mr. Ricord has got this answer by the cross-examination upon a subject matter to which I had not directed the witness' attention. It has come out during the cross-examination unexpectedly even to himself, and now he wants to follow it up.

Mr. R. I leave it then.

*Rev. Samuel C. Damon sworn by C. Hopkins.*

The witness examined by Mr. Ten Eyck.

Mr. Ten Eyck. Mr. Damon how long have you resided on the Sandwich Islands?

Mr. Damon. I arrived here on the 19th of October, 1842.

Mr. T. E. Have you resided here ever since?

Mr. D. I have, sir.

Mr. T. E. In what capacity?

Mr. D. As chaplain to seamen.

Mr. T. E. Since you have been here, Mr. Damon, who has been generally known or recognized as the general business agent of this Government?

Mr. D. So far as my knowledge extends, Dr. Judd.

Mr. T. E. If you desired to get at the views and opinions of the King and Government in regard to any business here or in regard to any Governmental policy, to whom would you be likely to apply, sir, for information?

Mr. D. To Dr. Judd.

Mr. T. E. And why, Mr. Damon?

Mr. D. From the position which he has occupied in this community since my arrival.

Mr. T. E. Prior to the commencement of this arbitration, and the mooting of this question of general agency, have you ever heard since you have been here anybody doubt that he was the general business agent of Government? Have you ever heard any man doubt that?

Mr. D. I do not recollect to have heard anybody express a doubt?

Mr. T. E. Have you ever had any business transactions with Government, Mr. Damon?

Mr. D. No, sir, I have not; none of any consequence. I am not able to say whether I have had any, unless it might be concerning native schooners, so far as I have sailed in them.

Mr. T. E. Who did you pay?—the captain?

Mr. D. I asked Dr. Judd how much I should pay.

Mr. T. E. Did he tell you?

Mr. D. He told me what it was right to pay.

Mr. T. E. Did you pay that price?

Mr. D. I did.

Mr. T. E. Well, you have had more or less, I suppose, to do with seamen who have come on shore. Have you ever had occasion to go to Government in behalf of those sailors, or to interest Government in their behalf in any way?

Mr. D. I do not recollect any instance now, sir. Where seamen have been in the fort in distressed circumstances I have generally applied to the Governor, or of late to Judge Andrews.

Mr. T. E. You never had occasion to apply to Government in behalf of a certain Mr. Wilson?

Mr. D. I recollect calling with a Mr. Wilson upon Dr. Judd.

Mr. T. E. Why did you call on Dr. Judd?

Mr. D. I was wishing to obtain a printer and to take the necessary steps for his remaining on the island.

Mr. T. E. What do you mean by taking the necessary steps for his remaining on the island?

Mr. D. It was to make arrangements with regard to the terms on which he would be allowed by Government to remain here.

Mr. T. E. Why did you go to Dr. Judd? Why did you not apply to the Governor or some other individual?

Mr. D. I supposed I could get the desired information better from him than from anybody else?

Mr. T. E. Did you make any arrangement, Mr. Damon, with regard to Mr. Wilson?

Mr. D. I made none.

Mr. T. E. Was any made in your presence between Dr. Judd and Mr. Wilson?

Mr. D. The Doctor informed him that it would be necessary for him to take the oath of allegiance.

Mr. T. E. Why? To remain here, was that the idea?

Mr. D. Yes, sir.

Mr. T. E. Well, did he do so, do you know?

Mr. D. I did not see him do it, but I have always supposed or understood that he did.

Mr. T. E. What did you understand so from—from Mr. Wilson himself, or from Dr. Judd or both?

Mr. D. I cannot say whether either of them told me he did. At the time he told Mr. Wilson that he must take the oath of allegiance or he could not remain on the islands.

Mr. T. E. Did you understand that to be authoritative, and that he could not remain unless he took the oath? Was any other effort made to get at the views of Government, or did you consider that the end of it?

Mr. D. From the position which I held to Mr. Wilson and Dr. Judd I asked no questions.

Mr. T. E. I merely ask your opinion, whether at that time, when this remark was made, you considered that was the end of it; that that was the determination of Government, and that it was useless to apply any further to the King or anybody else? I ask whether you considered it *pou* in other words.

Mr. D. I am not prepared to state that, sir. I recollect very distinctly the day I called upon him. From the feelings which I had at the time I thought it was best for me to have nothing to say to either party about it.

Mr. T. E. You certainly must have had an opinion whether you considered that it was useless to make any farther effort after Doctor Judd had given his answer or not. Whether, in your opinion, that was the end of the matter, and that you need not make any further effort?

Mr. D. I appeal to the arbitrators whether it would be —

Mr. T. E. I will not follow it out.

By the Board. Mr. Damon perhaps you misunderstand the question. It is merely to know whether you considered Dr. Judd's answer conclusive with regard to the necessity of his taking the oath of allegiance?

Mr. D. I certainly did.

Mr. T. E. The idea is this, whether you considered it an authoritative reply?

Mr. D. I did so.

*Cross-examined by Mr. Ricord.*

Mr. R. You said, Mr. Damon, that so far as your knowledge extended, Dr. Judd was the Government agent. How far did your knowledge extend, sir? I use your own words.

Mr. D. To the general knowledge which I think I may say I have of the business community.

Mr. R. What kind of business have you had knowledge of in regard to his transactions? What is the character of the business which has given you your knowledge of his transactions?

Mr. T. E. I do not wish to object to the question, but I asked Mr. Damon what was the general reputation, I did not ask his individual opinion.

Mr. R. I want to know how far his knowledge extends. He mentioned his knowledge —

Mr. D. I am knowing to the fact that business people in this community when they wished to obtain information with regard to the views of Government have in former times applied to Dr. Judd.

Mr. R. You said something about business. Did you mean merchandize, money affairs? What kind of affairs?

Mr. T. E. I understood the witness to say financial affairs.

Mr. R. What other affairs?

Mr. D. Landed affairs.

Mr. R. Who is Mr. Wilson that you speak of, sir?

Mr. D. He is a young man that I believe at present is foreman in the "News" office.

Mr. R. Did he come here in the capacity of a sailor?

Mr. D. He came here, I think, a boatsteerer on board the American whale ship Navy.

Mr. R. Do you know whether by the laws there are more obstacles in the way of sailors remaining and landing on the islands than other people?

Mr. D. Yes, sir, I believe there are.

Mr. R. To whom is it usual to apply for permission to remain by the laws?

Mr. D. To the Governor of the island.

Mr. R. What then was your motive for going to Dr. Judd? Why did you not go to the Governor?

Mr. D. As I replied when I was questioned previously, it was because I thought he could give me all the desired information that I wished.

Mr. R. Do you speak the native language?

Mr. D. I do not.

Mr. R. What has been the custom with regard to administering the oath of allegiance? Who administers it?

Mr. D. I never saw it administered—I do not know.

Mr. R. Who have you understood administers it? Does not the Governor administer it?

Mr. D. I suppose he does, although I never saw it.

Mr. R. Who grants permission for a sailor to remain?

Mr. D. I suppose the authority must come from the Governor.

Mr. R. Is it not a written permit for him to remain signed by the Governor?

Mr. D. I believe it is, though I do not recollect ever to have seen one.

Mr. R. Is it not a matter of favor Mr. Damon—you know something about printers, for instance—Mr. Wilson is a printer—is it not a matter of favor on the part of Government to allow sailors to remain on the islands? Have you never so understood it?

Mr. D. I cannot reply to that question definitely.

Mr. R. What is your impression about it?

Mr. D. My impression is this, that —

Mr. T. E. I suppose the law makes all this plain.

Mr. R. I want to know what the witness thinks about this. I want to show by and by that these are mere matters of course, but I want to get the witness' own opinion.

Mr. T. E. I am not aware that there has been any thing said on the direct examination in regard to this subject.

Mr. R. (To witness.) Did you not go there to get Dr. Judd's influence with the Governor to allow Mr. Wilson to stay and take the oath of allegiance?

Mr. D. I supposed that if I made known the circumstances under which I wished Mr. Wilson to remain, by Doctor Judd's saying so to the Governor that he would remain. I thought there would be —

Mr. R. Did you want to get employment for him at the time?

Mr. D. I wished to employ him myself.

Mr. R. Did Dr. Judd inform you that it would be required of him to take the oath of allegiance to remain here? That that was one of the conditions precedent to his remaining here?

Mr. D. So I understood.

Mr. R. Did he say who required it?

Mr. D. I do not recollect that he did.

Mr. R. All this, gentlemen, can be explained by the laws themselves. I will explain them all without troubling the witness, whose testimony will not amount to any thing compared with the law itself.

*Rev. R. Armstrong sworn by Mr. Hopkins.*

Witness examined by Mr. Ten Eyck.

Mr. Ten Eyck. Mr. Armstrong how long have you lived on the Sandwich Islands?

Mr. Armstrong. Since May, 1832, excepting but once for nearly a year I was absent on a mission to the Marquesas Islands.

Mr. T. E. During the last three or four years who has been generally considered to be the general business agent of Government?

Mr. A. There was a season, according to my understanding of the matter, when Dr. Judd was the general agent of Government as related to foreigners. When Mr. Ricord —

Mr. T. E. That will do, sir. If Dr. Judd expressed to you any particular views with regard to business matters, or any opinions in regard to Government policy, would you have regarded such views and opinions as the views and opinions of Government?

Mr. A. I have not completed my answer to the previous question, I was interrupted.

Mr. T. E. I asked you who for the last three years had been considered the general business agent of this Government, and you said that for awhile all business with foreigners was transacted through Dr. Judd.

Mr. A. For awhile, but I had not said the rest.

Mr. T. E. Now I ask another question; that is, if Dr. Judd had expressed to you any particular views with regard to business matters, or any opinions in relation to Government policy, would you have regarded such as the views and opinions of Government?

Mr. A. I think I should until the arrival of Mr. Ricord.

By the Board. Let Mr. Armstrong answer that first question. The answer given does not, perhaps, express an idea of what he meant.

Mr. Ricord. I would wish to say in regard to this and other witnesses, that I have heard complaints on the part of some that the whole of their answers were not got down. So much was got out, however, as to make them appear to falsify themselves upon the record which was to go abroad with only a portion of what they had to say on the topic. I merely wanted to express my view.

Mr. T. E. I am sorry Mr. Ricord has been so negligent.

By the Board. (To witness.) Go on with your first answer.

Mr. T. E. One moment, if you please, till I get down this. Now in regard to the first question I asked you, who had been generally considered to be the general agent of this government for the last two or three years in business transactions with foreigners? Now you have replied to it partially.

Mr. A. I intended to say that Dr. Judd, according to my impression, was the prominent man so far as related to transactions with

foreigners until the arrival of Mr. Ricord. Since then the agency was divided. I have regarded Mr. Ricord for a season —

Mr. T. E. I have not asked what your opinion was, I asked what was the general impression?

Mr. A. It was my impression that Mr. Ricord was regarded to have had a paramount influence for a season.

By the Board. How long had Mr. Judd paramount influence?

Mr. A. From the time he left the mission till just after the arrival of Mr. Ricord.

By the Board. Do you recollect the dates?

Mr. A. I think he left the mission in 1842, somewhere about May; that was the first we knew of his having left.

By the Board. When did Mr. Ricord arrive?

Mr. A. I do not know when he arrived. I think in February or March, 1844.

Mr. T. E. Did I understand you to say that after Mr. Ricord came he had the paramount influence?

Mr. A. So I think. In certain business Dr. Judd had entire control perhaps. In certain other respects my impression was that Mr. Ricord had more control, more influence.

Mr. T. E. Than who?

Mr. A. Than Dr. Judd.

Mr. T. E. Then in certain matters the views and opinions of Mr. Ricord you would consider the views and opinions of Government, and in certain other matters the views and opinions of Doctor Judd? Did I understand you so?

Mr. A. Yes, sir.

Mr. T. E. Will you tell me which is which? In what matters you considered Mr. Ricord to have paramount influence, and in what matters Dr. Judd?

Mr. A. In cases of trial and law claims I should regard Mr. Ricord's opinion as of more influence in those times than Dr. Judd's. In a financial matter, and matter relating to a vessel, or things of that kind, I should regard Dr. Judd as the business man.

Mr. T. E. What should you think if they were talking about the Belgian Contract?

Mr. A. Well, in regard to that I should consider them both equal. I do not know that I should say so either, for I think that on reflection I should say that Mr. Ricord's opinion in that affair would rather control, because matters of law contracts of that kind would fall to his department. He was regarded as the person to refer to, and I understood the thing was committed to his management.

Mr. T. E. Suppose Dr. Judd had expressed some opinion, should you consider it nothing?

Mr. A. No, I should not consider it nothing.

Mr. T. E. If he had expressed a positive view with regard to the



Government policy in reference to it, should you think that policy likely to be carried out?

Mr. A. Yes, if I had heard him say positively that such and such was the determination of Government, I should think that that was the Government policy, and the same, perhaps, of Mr. Ricord.

Mr. T. E. Well, sir, suppose Dr. Judd had expressed views and opinions in regard to Government policy and what would be carried out, and Mr. Ricord had expressed the opposite view that it would not be carried out; which would you be most likely to attend to?

Mr. A. At a certain time, I mean when those two gentlemen were the prominent men in Government so far as related to foreigners, I do not know which—I can hardly say which. My impression was, as I said before, that Mr. Ricord had a controlling influence.

Mr. T. E. Then do you mean that you would have inclined to his opinion—that that would be the opinion likely to be carried out?

Mr. A. I think I should.

Mr. T. E. When was this time that you speak of?

Mr. A. It was between say the month of March or April, 1844, and Mr. Wyllie's coming into office, and subsequently Mr. Richards coming into office.

Mr. T. E. It was when? When did you say that he had this paramount influence?

Mr. A. From his arrival, or after he took office sometime in the spring of 1844, until Mr. Wyllie came into office.

Mr. T. E. For about a year you think he had this paramount influence in Government.

Mr. A. Yes, in regard to policy in relation to foreigners.

Mr. T. E. Well, now, Mr. Armstrong, will you tell me why you think so?

Mr. A. Because from my frequent intercourse with him and the chiefs and those concerned in Government, I think it was my impression that his mind had more control than the other minds.

Mr. T. E. Over whom?

Mr. A. Over the general affairs of Government.

Mr. T. E. Whom did it affect?

Mr. A. The King, Dr. Judd, Mr. Young.

Mr. T. E. Then you think Mr. Ricord's intellect influenced the intellect of all the other officers of Government?

Mr. A. Yes, I think it had more influence than any other mind. I speak not of the powers of natives amongst themselves, but of foreigners.

Mr. T. E. Does Mr. Ricord speak the native language?

Mr. A. I think not, sir.

Mr. T. E. How, then, would his views and opinions be got at? How would the King and chiefs get at his views and opinions?

Mr. A. Sometimes they got at them through me, and sometimes, as I supposed, through Dr. Judd.

Mr. T. E. How often did they get at them through you?

Mr. A. It would be difficult for me to tell. I was frequently employed in that way, and in doing translation for Mr. Ricord, not often in speaking, generally in writing. After Mr. Richards arrived, my impression was that he was the medium of communication between the mind of Mr. Ricord and the legislature, the King and chiefs in council assembled: the matters were digested by Mr. Ricord, translated by Mr. Richards and passed over to the legislature.

Mr. T. E. This was till Mr. Wyllie came into office; did his mind operate with this extraordinary influence, after that?

Mr. A. My opinion is, that the general agency was then more divided amongst the gentlemen in office, and I could not speak so positively as to his influence. My impression has been, that in their different appointments, each one has had paramount influence over the affairs and business arising in his department. That is as near as I can express it. As far as foreign relations go, Mr. Wyllie would have the most influence; concerning law and the courts, Mr. Ricord; concerning finance, Dr. Judd; and in relation to morals, Mr. Richards.

Mr. T. E. With regard to interior affairs, who would operate there?

Mr. A. Mr. John Young is known to be the minister of interior, and my impression has been, that the affairs of the natives have been managed a good deal by the native Government and rulers.

*Cross-examined.*

Mr. Ricord. Have you had much personal intercourse with the King?

Mr. Armstrong. Yes.

Mr. R. Are these views of yours based upon that intercourse?

Mr. A. Partly so, sir, I should say.

Mr. R. To what extent?

Mr. A. Well, I had conversation with the King, not so much recently as in former times, in relation to matters of Government. Previous to the return of Mr. Richards, it fell in my way to see him more, as he had no chaplain, and it was rather my business to be with him as a religious teacher. Frequently he alluded, and the other chiefs did so, to Government matters.

Mr. R. About what years?

Mr. A. 1844 and 1845, say.

Mr. R. I would simply ask you one other question. If the King reposed any specific thing in me, would you consider it entirely reposed in me?

Mr. A. Yes, I should think it was, that is to say, I have never got any thing from them, or heard any thing from them, to the con-

trary. What conversation he might have with Dr. Judd in relation to such a matter I could not say.

Mr. R. What I would get at, is whether if he reposed in me the affairs of Ladd & Co., specifically and solely, would you consider them as put entirely in my hands, knowing the views of the King?

Mr. A. I should say, that so far as he intended to repose them in your hands he would; as far he intended they should be reposed in your hands.

*Mr. E. H. Boardman called to the stand.*

Mr. Ricord. I beg leave to object to Mr. Boardman as having an interest in this suit. I would like to have him sworn on the *voir dire*.

*Mr. Boardman was sworn accordingly, by Mr. Hopkins.*

Mr. Ricord. How much do Ladd & Co. owe you?

Mr. Boardman. I am not able to say.

Mr. R. Do they owe you any thing?

Mr. B. I have an unsettled account.

Mr. R. How much?

Mr. Ten Eyck. Do the arbitrators insist that that shall be answered?

By the Board. We should like to have on the record the position of his pecuniary standing with Ladd & Co.

Mr. Ricord. Then, Mr. Boardman, do you hold no mortgage against the property of Ladd & Co.?

Mr. Boardman. I do.

Mr. Ricord. What property is it?

By the Board. I think you had better ask Mr. Boardman whether he has any pecuniary interest.

Mr. Ricord. Will you then answer, Mr. Boardman, whether you have any pecuniary interest?

Mr. Boardman. I have not, because I think that whether this arbitration results in favor of Ladd & Co. or against them, I am secured. I do not depend on the result of this case for my payment.

Mr. Ricord objected to the competency of the witness.

*Mr. Boardman was then sworn to give evidence, by Mr. Hopkins.*

Mr. Ten Eyck. How long have you resided on these Islands?

Mr. Boardman. I came here in May, 1841.

Mr. T. E. Have you been here ever since?

Mr. B. Yes sir, I have lived here ever since. I have been to Kauai, but I have not been from the Islands.

Mr. T. E. Well sir, have you been engaged in business ever since you resided here?

Mr. B. I have.

Mr. T. E. Have you been accustomed to do business with business men in town, and to associate with them a good deal?

Mr. B. I have.

Mr. T. E. Well, sir, for the last three years, who has been considered, amongst the business portion of the community, as the business man of Government with foreigners?

Mr. B. I do not know of any one so prominent as Dr. Judd; I should think he was the principal man.

Mr. T. E. Who has been held out to be, and who has acted as the general confidential agent of Government in business matters?

Mr. B. I have always understood Dr. Judd to be the man.

Mr. T. E. What has been the general usage of practice, and course of business with the business public here, when they have had business transactions with the Government? To whom have they been accustomed to apply to transact their business?

Mr. B. I am not acquainted with the general business of the place sufficiently, to give a definite answer, and can only answer according as I have heard remarks. According to the best of my knowledge, I should say Dr. Judd.

Mr. T. E. Have you ever heard Dr. Judd express himself in regard to his own powers, and state what he considered himself to be?

Mr. B. I have.

Mr. T. E. What has he said about his own powers?

Mr. Ricord. If the arbitrators will allow me to observe, that is the very thing upon which the question has arisen; that is emphatically the point I mean, Dr. Judd's declarations in regard to his own powers.

By the Board. The object of this is to get at the general reputation of Dr. Judd's general agency by parole evidence.

Mr. Ten Eyck. Exactly, and if Dr. Judd has expressed himself to be such and such a thing, we want to know what he has considered himself to be.

Mr. Ricord. When you come to get his own expressions, I would like to cross-examine him upon what he meant by them.

Mr. Ten Eyck. I am trying to establish Dr. Judd's agency; if he has expressed his own views of his own powers, it goes so far to satisfy the arbitrators of the impression of the public in regard to his agency.

By the Board. Yes, we think you are right. (To witness.) What have you heard him say?

Mr. Boardman. Of his own power and authority, I have heard him say to me, that nothing could be done in this Government, unless he consented to it.

Mr. Ricord. What time was this, Mr. Boardman?

Mr. Boardman. That was in the spring of this year, I think, he alluded to another time, which would be the fall of 1845, as I understood him.

*Cross-examined.*

Mr. Ricord. What did Mr. Judd say he meant by being supreme? Did he tell you?

Mr. Boardman. He said it in allusion to his powers.

Mr. R. On what occasion was this?

Mr. B. He called into my room, and the conversation was in relation to a petition which had been got up.

Mr. R. How did that lead him to make that expression?

Mr. B. He spoke of some parts of the petition as implicating him as a principal man.

Mr. R. How did that lead him to make that assertion?

Mr. B. I told him I could not tell which petition he alluded to; I told him I had signed one, but I did not know whether it was that one. Then he went into particulars, that it was that one which represented that the native Government had been usurped by unprincipled men, foreigners.

Mr. R. Well, how did that lead him to it?

Mr. Ten Eyck. Tell it all out Mr. Boardman.

Mr. Ricord. Was it ironical or not? What was the import?

Mr. Ten Eyck. Go on and tell the whole story.

Mr. Boardman. He asked me if I thought he was a bad man. I believe I evaded the question, and did not answer it directly. Soon after that the conversation stopped, and he made this remark; he said I confess to you, that at that time (as I understood it, alluding to the time when the petition was got up) at that time I was supreme; there was nothing done in this Government unless I assented.

Mr. R. How do you know it alluded to that?

Mr. B. Because we talked about nothing else.

Mr. R. What time did the petition allude to? At the time when the usurpation of the foreigners took place?

Mr. B. I am not able to say.

Mr. R. What made you think it was about the time of getting up the petition?

Mr. B. Because it was the petition which I did sign, and which I particularized as having been signed here when Capt. Spring was here, so we had both the same petition in our minds at that time.

Mr. R. Now, I would like to know whether you, as a christian and a man on your oath, mean to say that remark gave that impression? Did you believe he was supreme?

Mr. B. I did, most certainly, and I believe so now.

Mr. R. Was he the sole officer of Government at that time?

Mr. B. I believe not.

Mr. R. How many officers were there? I speak of foreigners. Was Mr. Wyllie an officer?

Mr. B. I do not know when he took office, but I believe he was.

Mr. R. Was I?

Mr. B. Yes.

Mr. R. Was Mr. Richards?

Mr. B. I do not know when he returned.

Mr. R. Was Judge Andrews?

Mr. B. I cannot tell you.

Mr. R. I would like, if you will allow me, but I will ask your permission. I would like, in farther examination of Mr. Boardman in regard to his interest, having only asked him one question on the *voir dire*, to exercise that prerogative which you have acceded to me in all other cases?

By the Board. You can prove his interest by independent testimony in your defence.

Mr. Ricord. I will do as you like. I can ask him many things regarding his own interest here, which would go on the record, and aid you in weighing his testimony.

By the Board. He has said that he was a creditor and considered himself secured.

Mr. Ricord. Now, if you will allow me to ascertain to what extent he is a creditor, and how he is secured?

By the Board. We do not think you can do that by him, you can by other means. He has stated that he had no interest; that he was a creditor, and was secured; we think that is conclusive.

*Witness examined by Mr. Ten Eyck.*

Mr. T. E. You said, in answer to a question of Mr. Ricord's that you believed Dr. Judd was supreme; how would you qualify it?

Mr. B. If I had any business with the Government, I should not go to any body else but him; I should depend upon his influence.

Mr. T. E. You mean that he had authority, and controlled things as he chose?

Mr. B. Yes.

*Cross-examined by Mr. Ricord.*

Mr. Ricord. Have you ever had occasion to do business with him?

Mr. Boardman. I have.

Mr. R. What?

Mr. B. In the general course of my own profession.

Mr. R. What is your profession?

Mr. B. To repair trumperies, sell goods and various things.

Mr. R. What transactions had he had with you to lead you to suppose him to be the general agent of Government, or supreme?

Mr. B. All his acts that I have known, either with myself, or that I have heard of his having with others, have been in strict accordance with his declaration.

Mr. R. What acts?

Mr. B. My business has not been so extensive as to know all that was going on. In one or two instances, he has settled accounts with the King with me, and within a year, the King bought a gold guard chain; it was sent to the King and Dr. Judd came back with the chain, and asked the price, and took it and paid for it afterwards.

Mr. R. Let me ask, is not your impression of his universal agency, founded on the declaration of others?

Mr. B. Not altogether. I judge of his general agency as I should judge of any other agency; I should judge that Mr. Marshall was principal agent of the house of C. Brewer & Co., and I arrive at the same thing in relation to Dr. Judd's agency; I cannot tell the course of reasoning.

Mr. R. Did you know what you were to be examined upon, when you came here?

Mr. B. No.

Mr. R. Have you had any conversation with Mr. Brinsmade about it?

Mr. B. No.

Mr. R. Nor with Mr. Ten Eyck?

Mr. B. No.

Mr. Ten Eyck. I think that is a perfect insult.

By the Board. Did you suppose that Dr. Judd did actually possess a supreme power, or that it was the power of influence; the power of influence instead of real authority?

Mr. Boardman. I did not suppose that he was King as King, but that he had influence with the King that would carry out all his views. I can only state my own belief about it. I do not know that there is any person, now, I should go to, if I wanted a favor of the King, quicker than Dr. Judd.

Mr. Ricord. I would like to know where you reside, where you board?

Mr. Boardman. I am living with Mr. Abell, that is where I board. I lodge in my own yard.

Mr. Ten Eyck. Is not your house in the same yard where Mr. Brinsmade sleeps?

Mr. Boardman. It is, and Mr. Williams too.

Mr. T. E. Is the King in your debt?

Mr. B. A very little, I believe?

Mr. T. E. He owes you, does he?

Mr. B. Very little, if any thing, I cannot state.

Mr. T. E. You have no interest on his side?

Mr. B. No, sir.

Mr. Ricord. Do you think, Mr. Boardman, that the King could pay you if he owes you?

Mr. Boardman. I think he could.

Mr. Ten Eyck. Do you think the King would, or Dr. Judd?  
Mr. Boardman. I cannot say.

*Mr. Jules Dudoit, French Consul, sworn by Mr. Hopkins*

Mr. Ten Eyck. For the last three years, Mr. Dudoit, who has been considered amongst the business community, as the general business agent of Government? What has been the general impression?

Mr. Dudoit. That depends on the department of business which is concerned.

Mr. T. E. I do not confine it to any thing, or department, I mean all business?

Mr. D. It is impossible to answer that, for there are several departments. If I had any business to do connected with finance I should go to Dr. Judd; if it was connected with law I should go to the head of that department; and if it had to do with foreign affairs I should go to Mr. Wyllie.

Mr. T. E. If Dr. Judd had expressed views with regard to business matters, or opinions with regard to Governmental policy, would you look upon them as likely to be carried out?

Mr. D. If Dr. Judd told me that, I should think it might be carried out, for no doubt he would agree with the other ministers, and express the general sentiment as well of the other ministers as of himself.

Mr. T. E. Do you think that if he expressed certain views they would be binding on the Government?

Mr. D. Yes, because I should think them the views of Government—as well of the King as the chiefs.

Mr. T. E. If Judge Andrews were to declare any views of Government, would you consider them as authoritative as if they came from Dr. Judd?

Mr. D. I would in certain cases.

Mr. T. E. In what?

Mr. D. For instance, in law cases I should think them as authoritative. I think it would be better for me to have an interpreter. I myself, speak French, and you must make an allowance for my not expressing myself correctly in English.

*Cross-examined by Mr. Ricord.*

Mr. R. Mr. Dudoit I would like to ask whether Mr. Judd has been since 1844 the universal and exclusive agent of Government in all departments?

Mr. D. No, sir.

Mr. R. Has he been in the land department?

Mr. D. No, sir.



Mr. R. In 1844 was he?

Mr. D. In 1844?

Mr. R. In 1844, '45 and '46?

Mr. D. Not since you arrived, sir.

Mr. R. To whom have you resorted for information concerning the views of Government on law subjects within that time?

Mr. D. Since you were here, sir, to you.

Mr. R. To me exclusively?

Mr. D. To you alone in matters relating to law.

Mr. R. To whom have you been in the habit of referring French subjects within that time for the same purpose?

Mr. D. To you, sir. Not later than the day before yesterday I did so in the presence of two witnesses present now I believe.

Mr. R. I speak particularly of 1844 and '45.

Mr. D. I speak of the time since you came. Before I applied to those who had the power—to Dr. Judd or other persons—for I was aware that the chiefs did not like to transact business with foreigners—they liked a medium—Mr. Bingham sometimes. They like to understand us well, and to know what we say.

Mr. R. If you wanted to bind the Government by a bargain, how would you proceed? Would you take a verbal assurance or something more?

Mr. D. I should want something more.

Mr. R. What more?

Mr. D. A document—a writing.

Mr. R. Would you consider that if the word of one of the ministers was passed to you it finished it?

Mr. D. No, sir, I would not consider it so except by the ratification of the King.

Mr. T. E. Before adjournment—as I see a large audience here—I am desirous to state to the arbitrators and the public, that an impression has gone abroad in the community, how or where or why I know not—but I want to say that I do not care about it—that because I appear here as the advocate of Ladd & Co., to assist them in developing the truth in regard to this matter in connexion with the Government, that therefore I am hostile to the Government of the Sandwich Islands. Now I want to state here publicly and distinctly, that I have no hostility to the Government, to the officers of Government, or anybody connected with it; so far from it that I have no feeling of that nature whatsoever. I have as much feeling for the prosperity of this nation as I have for that of Ladd & Co. or any of the firm. I want you to understand that I have no hostility to the Sandwich Islands Government or any member of it. I appear here because Ladd & Co. could not find anybody else connected with the profession of law to do it. If there had been a professional man here to assist them, I should have been the last individual to take upon me the management

of the case. God knows I would be rid of this matter if I could. In regard to the interests of Ladd & Co. I shall do all I can to defend and protect them and their rights, as I would defend and protect the rights of any American citizen living upon the Sandwich Islands, to the best of my abilities and with an honest purpose. Not that I desire to mulct the Sandwich Islands Government in favor of Ladd & Co.; not at all. All I want is to see that their rights are defended, and to protect them. That done, I have done with the matter, and I shall have no feeling whether it goes in favor of Ladd & Co. or otherwise. I deem it my duty to say this because insinuations have been put out that I have taken up this because I was hostile to the Government. Now every body that knows any thing about me, knows that I came into it with reluctance. If I had enough money I would pay the claim rather than go on with it. I have no hostility to the Sandwich Islands Government, and I here proffer to the Government and its officers every aid that I can render them to promote the prosperity of this Government and people.

Mr. Ricord. If I may be presumed to know any thing of the feeling of the Sandwich Islands Government, that is of its officers and King, (and I would like to state that I have this day had a conference with them on the subject of this arbitration,) I believe it is the impression amongst all that Mr. Ten Eyck has taken up a thankless service for Ladd & Co., and against the Government to which he was accredited, and that there was no cause for his doing so.

The Board thought this was a spontaneous expression of Mr. Ten Eyck's feelings, and not a matter for argument.

Mr. Ricord. As you have allowed him to put down his views, I think it best to put my own beside them. I regard the Consul, Mr. Turrill, as the proper person to have taken up this case and not the Commissioner.

Mr. Ten Eyck. That was merely a spontaneous effusion of mine. If Mr. Ricord wants to argue the matter —

The Court adjourned till Tuesday, the 15th instant, at 7 o'clock. P. M.

#### TWENTY-SIXTH DAY.

The Court resumed at the hour appointed.

*Mr. R. C. Wyllie, Minister of Foreign Relations, sworn by Mr Hopkins.*

Mr. Wyllie. May I be permitted, before going into evidence, to make one remark. I would mention that I only received the summons to appear here to-night at one o'clock to-day. Now, if not by right, at least by courtesy, I think I ought to have twenty-four hours notice. It so happened that to-day two matters of importance passed under my view, each of them requiring me to examine several documents in

connexion with them. This occupied much of my time; and then at four o'clock I was ordered to wait on the King to take his instructions previous to his departure for Maui, and as I was asked to attend here at seven o'clock, with all the documents in my keeping relating to the Belgian Contract, I must say I think the notice was rather short. However, I do not mean to take any advantage of that circumstance, for I wish at all times to show respect to authority, which I recognize in this court.

Mr. Ten Eyck. If Mr. Wyllie requires any further time I will gladly defer his examination.

Mr. Wyllie. I would say that if in the course of my examination you should refer to any documents that I have overlooked—and I may have overlooked some—you will give me further time, my only object being that the truth, the whole truth, and nothing but the truth, should be given in evidence before you.

Mr. Ten Eyck. I would then say that we can perhaps occupy the time this evening with other witnesses. My desire was to have had all the papers connected with that contract here that I might have the opportunity of seeing them all, that I might know which to lay before the arbitrators.

By the Board. We understand Mr. Wyllie to say that he has brought those papers, but that possibly some may have escaped him.

Mr. Wyllie. My impression is that I have with me all the papers bearing upon that point, and some that bear upon collateral points.

Mr. T. E. Mr. Wyllie what is your position in the Government?

Mr. W. I am Minister of Foreign Relations.

Mr. T. E. Have you charge of all the documents, papers, &c., relating to correspondence with foreign agents and so forth?

Mr. W. Yes.

Mr. T. E. Have you with you any papers relating to Ladd & Co's affairs, or to the Belgian Contract?

Mr. W. I have some touching incidentally on the Belgian Contract.

Mr. T. E. Have you with you the correspondence which passed between this Government and the commissioners of this Government in Europe.

Mr. W. Yes.

Mr. T. E. Will you allow me to look at it if you please?

Mr. W. In regard to that correspondence I may be allowed to remark, that the letters often refer to other matters. The letters touching on Mr. Brinsmade's operations in regard to the Belgian Contract are not by any means separate. If it were proper that instead of submitting the whole of the letters to you, I should, during the course of your interrogations, be required to point out the paragraphs alluding to the subject, it would save time as well as labor to yourselves. Besides, there are other matters totally distinct, not having

the least reference to that business, the propriety of making which public I very much question.

Mr. T. E. I would state that really I do not know that I can tell what relates to this matter without examining the papers, but I would not wish to go into papers not relating to the matter. I would suggest that Mr. Ricord and myself should go to Mr. Wyllie's office to look over those papers, when Mr. Wyllie would allow me perhaps to take such extracts as I wish. I would not like to read all the letters, and it is not proper that I should.

Mr. Ricord. There must be things in that correspondence connected with France and England, affairs which it would be a breach of courtesy for Mr. Ten Eyck, the U. S. Commissioner, to be allowed to know.

Mr. T. E. I have said that it would be improper for me to have the reading of those documents.

Mr. W. I may mention that there are letters, amongst others, written by one of the gentlemen now presiding as an arbitrator, which relate to family and other matters, which I should object to make public, although I am perfectly willing, as I said before, to conduct all that lays in my power in order that the whole truth may be made as clear as the sun at noon-day. Yet I question the propriety of my submitting those letters in any way in which they should go out of my hands without a certainty of their returning to my possession. I may say that I have marked all the paragraphs which relate to the point in question. On taking office the first thing I did was to take cognizance of all documents in the archives and to docket them. You will find some little facility in going over the papers, because wherever reference is made to the Belgian Contract you will find it docketed outside, and inside you will find the passage marked in pencil.

Mr. R. I think it will be better for the arbitrators to go through them, and afterwards give us the extracts which relate to the point.

Mr. T. E. My suggestion would be, that perhaps it would be better that the arbitrators should go with myself or Mr. Brinsmade and Mr. Ricord to Mr. Wyllie's office, who would show us such parts as relate to this affair. I do not wish, and it would not be proper for me to see, the other parts.

Mr. W. I shall be most happy to make my time suit that of the arbitrators, whatever important duties I may have to perform. I beg to impress upon you that any thing that may appear in the shape of an objection in the submission of those papers, will not, I hope, be misunderstood. I should be happy to submit any papers, however secret, to Mr. Ten Eyck's honor; but still, letters relating to the secrets of state of this small kingdom, I should not like to give publicity without the King's permission.

Mr. T. E. I make the objection on that ground. I would not wish to examine any papers that may be considered secrets of the

Government. I raise the objection, and wish that it may be stated that I would not like to examine or see any papers of that kind. The only plan I know is that which I suggest.

Mr. W. If I may be allowed to trespass a little further on your time, I would state that in reference to that word secret my own feeling is that there is nothing in any of the letters that might not be communicated to you, gentlemen, or Mr. Ten Eyck, but it would not be in keeping of the King's order. There is nothing that reflects in any way on the gentlemen who acted for the King.

Mr. T. E. If this suggestion of mine meet the approbation of Mr. Wyllie and Mr. Ricord, I will defer the examination of Mr. Wyllie, and will go to-morrow to examine the documents.

By the Board. We should wish to ask Mr. Wyllie with regard to this general agency of Dr. Judd how far it goes.

Mr. W. Why I can mention very pointed cases against his general agency if you wish to know them. I should think in a question of that kind that facts are better than theories.

By the Board. Do you consider him as general business agent of the Government?

Mr. W. By no means. If you wish to know my opinion, perhaps I had better state some facts upon which it is founded.

By the Board. We should like to know the facts.

Mr. W. I have no doubt that under Mr. Judd's appointment as the King's interpreter and recorder, from his desire on all occasions to show his zeal and care in the King's service, he considered himself bound to interpret in all cases relating to all business between the native Government and foreigners, and in fact to make himself useful in all ways. But in 1843 he had a specific appointment as Secretary of State, and afterwards when Mr. Ricord arrived here, about March, 1844, the law department was confided to Mr. Ricord. I knew as a matter of fact that on the 15th of March, 1844, when I waited on Dr. Judd by the instruction of Consul General Miller, and on his behalf to submit certain documents concerning Mr. Charlton, thinking that Dr. Judd had the power to attend to that business, he said he could not act without authority from the King, and could not venture to give an opinion that would commit the Government, and that those documents might be very well, but there were other documents relating to that matter which he was not allowed to produce. I remember also another case which sufficiently marks his desire not to assume powers that he considered were not confided to him, and it has some sort of connection with this very Belgian Contract. In relation to the case of James Ruddach, whom the Consul General recommended to my care on his going away to Tahiti, and whose case I began to impress on Dr. Judd. Wishing to know what was to be done in relation to land claims, Dr. Judd told me he had no power to express an opinion, except this, that it was the wish of the King and chiefs to take up the

consideration of all matters relating to lands on the return of the commissioners, and that until they knew what had been done in relation to the Belgian Contract, and until what was done in Europe had been passed before the King and chiefs and legislature, they could not say what principles or rules would be adopted. He explained the thing in a way that seemed so honest, that placing all faith in him, as I always did, I advised Mr. Ruddach and others that the reason why their claims were not settled was because Mr. Richards and Haalilio had not arrived, and that when they did arrive those things would be settled. These two cases are fresh in my memory, as having happened at a time when I was not a Government officer and held a different situation. It seemed that Dr. Judd instead of usurping powers seemed to adopt the principle of not acting for want of power and authority from the King.

By the Board. We have no other questions.

Mr. Ten Eyck. In the first place I would like to read from the Government newspaper here some extracts with reference to the understanding on the part of Government of Dr. Judd's agency and powers. The first extract I wish to read is contained in the *Polyesian* of Saturday, August 2d, 1845.

Mr. Ricord. Is it headed by authority.

Mr. T. E. I do not know.

Mr. R. I object to it as not being authoritative. It is not the views of Government. I believe you have decided already that you will not receive the views of Mr. Jarves as the views of Government.

By the Board. Any announcement, we think, may be received.

Mr. T. E. The arbitrators will bear me witness that when Mr. Ricord introduced newspapers I remarked at the time I do not object. because when I come to introduce newspapers I want the same liberty to be allowed me.

By the Board. We think what Mr. Ricord read had some connection with his argument, and was not introduced as evidence.

Mr. T. E. Very well, I would read this extract from the newspaper. It is a part of the public history of the times, and I think I shall be able to show authority for so doing in the law books; but, at all events, I will say I think I could find authority to support me in the course I am pursuing. I read this as the public history of the times and the most authoritative document I can possibly introduce before the arbitrators. I cannot very well get the petition itself, although I might possibly sue a subpoena upon the clerk or whoever it may be who has charge of the archives of the legislative department. This is a petition presented to the legislature and upon which a report was made. It is published in the Government paper, but it is not stated to be by authority. By going to the person who has charge of the original documents I might get at the original, but here is a history of the whole thing that was published when it occurred, and I think it is as good as the original itself.

Mr. R. I would say that when the gentleman comes to sum up his testimony he may read that as connected with his argument, but he is not to read it as evidence, your rule being that nothing in the newspapers which is not by authority shall be received as evidence.

By the Board. What is your object, Mr. Ten Eyck; is it to show the authority of Dr. Judd?

Mr. T. E. Yes. I would ask Mr. Jarves whether this appeared by authority.

Mr. R. He may possibly make it official.

*Mr. J. J. Jarves sworn by Mr. Hopkins.*

Mr. T. E. Mr. Jarves are you the director of the Government press?

Mr. J. I am.

Mr. T. E. Is the Polynesian newspaper considered the Government gazette?

Mr. J. It is.

Mr. T. E. Will you be so kind as to look at this paper and give me some intelligence of how it came to be published, and whether you received it from any person authorized by the Government to have it printed.

Mr. J. At this time I could not say how I came by it.

Mr. T. E. Have you any doubt that it was handed to you by some one authorized to require its publication; or, in other words, would you have published it without some authority?

Mr. J. I would not have published a document of that kind unless it had come from a person who could authorize its publication. To the best of my knowledge I think Mr. Richards handed it to me.

Mr. T. E. Was he in office at that time?

Mr. J. I think he had no office at that date.

Mr. T. E. Would you state whether you would have published that unless you had got it from some person authorized to present it for publication for the Government? Would you have been likely to have published it otherwise?

Mr. J. I should have published a document like that under any circumstances if I believed it authentic.

Mr. T. E. Have you any doubts that that is an authentic document?

Mr. J. No, I have not.

Mr. T. E. I am sorry to be under the necessity of trying to get at the authenticity of these things. Here is another article that appears as an editorial in the Polynesian of the 14th of February, 1846, giving an account of the visit of the King to the island of Maui. By what authority was that published, or how did you come to publish it?

Mr. J. Those were merely the rough notes out of a journal of a person who was with the King, put in my possession, and I believe I wrote the article from them.

Mr. T. E. Who furnished the notes—anybody connected with the Government?

Mr. J. Mr. Judd.

*Cross-examined by Mr. Ricord.*

Mr. R. Mr. Jarves, what documents are Government documents which appear in the paper?

Mr. J. Those under the head of "By Authority."

Mr. R. Do you consider any others as binding upon the Government than those?

Mr. J. No, I should think not.

Mr. R. Are those merely your views which are not under "Authority?"

Mr. J. Where they are editorial they are simply views that I am responsible for. As for the communications I leave you to judge of them. I consider Government only responsible for those passages that are inserted by order of Government, and which come under the head of "Authority."

Mr. R. Is there any proof in your paper to show that such is the case?

Mr. J. Yes, it is in the first volume.

Mr. T. E. We understand what that means; the same thing is scattered over all the paper. The article to which Mr. Jarves refers makes Government to assume the responsibility of the "By Authority" parts, and exculpates it from all the rest. I submit to the arbitrators whether I may read.

By the Board. What is the object? Is it in regard to Dr. Judd's general reputation?

Mr. T. E. Yes, sir.

By the Board. Well, you may read.

Mr. Ricord excepted to the decision.

Mr. T. E. The part that I want to call the attention of the arbitrators to, is the reply of the legislature to a certain petition. It seems there was a petition presented to His Majesty and the Nobles connected with Government matters. Amongst other things the petitioners prayed that all white men might be expelled from Government. The reply to this petition (as drawn up by a committee appointed for the purpose,) is dated July 3d, 1845. [See *Polynesian*, page 43, Vol. 2, No. 11. It says:

"We submit for your approval or disapproval the following reply to the petitions of the common people of Lahaina, Wailuka and Kailua.

"1st. In regard to the Independence of your Government. The meaning of the Independence is; that Kamehameha III. is King of the Hawaiian Islands, none shall rule over him. The reason for acknowledging the Independence, is in the words of Great Britain and



France. 'The existence in the Hawaiian Islands, of a Government capable of maintaining its relations with foreign nations'—and such was the opinion of America and Belgium.

"How can we maintain our relations with foreign nations? By this means only, viz: His Majesty must choose skillful agents, of equal skill with the agents of foreign nations, to transact his business with them.

"PETITION 2d. 'To expel from office all white men whom you have appointed to be officers of the Hawaiian Islands.'

"If they are deprived of office, where are the men who are qualified to transact business with foreigners? At present they are not to be found; hereafter the young chiefs will be qualified when they become of age and their education is completed."

Then here is another article entitled, "His Majesty's late visit to Maui." [See *Polynesian*, Vol. 2, No. 39.] The first passage I would direct your attention to is this:

"Your hereditary chiefs have been in trouble, and therefore have chosen some to aid them. They are the ministers of white skin, whom you see. This is according to the old system. They know more than we, and I have chosen them for the sake of their knowledge. You have heard of our trouble. I have seen it. Therefore we have chosen these helpers to help you. We have heard of your petitions. Should we consent to them, trouble would immediately follow—instantly—before night. I ask of you therefore to put an end to your wish to promote that petition."

Then again.

"We have all of us seen our past troubles. When business was formerly done, Dr. Judd would be present, but must keep silent or be sent away. When Kamehameha III. put on him his own garments, he was heard. He took the oath of allegiance and stood in the gap to save us."

I want to call the attention of the arbitrators to that remark—"When King Kamehameha put on him his own garments he was heard." That is on Dr. Judd—when he put them on Dr. Judd.

"But to avoid difficulties, I have chosen a few white men to aid me and counsel with me, but the power of the chiefs is unaltered. They only are aided by the white officers who are sworn to be one with us. Let us take care of ourselves. God is above. In no enlightened land is there a denial of God."

"We sent ministers to England, who obtained us much benefit. Mr. Judd is now a naturalized Hawaiian—he is a *Kuhina*, and there are others, who aid and preserve the kingdom. Fear not these men, they will save us; but the views of certain petitions would be our ruin."

"What was right then is wrong now. I have therefore chosen some white men to be my ministers. One of them stands with me;

the rest are at home. These things are for your good; for the advantage of our reign."

After that I will refer to this:

"The King has chosen foreign ministers. Mr. Richards went as a subject with Haaililio. More have been needed and chosen. No land has ever been taken by those who have taken the oath of allegiance. Bad aliens are alone dangerous to the Kingdom. The King has wept and watched over his soil until he chose those men to aid him, and he is now at rest. Why do some say it is a great expense? Shall not wisdom be paid? Is not wisdom better than gold? Those who take the oath will be faithful and serve our King."

Mr. Ricord. Do you propose to print this?

Mr. Ten Eyck. I propose to use these passages in evidence.

Mr. Ricord. If you mean to use them as evidence, I would wish to have the whole articles to refer to by and by. Where he says the garment was put upon him. I want to show that the garment was put upon Dr. Judd during the provisional cession, when Dr. Judd's powers were plenary, and the only time that they were so, during his life. The King retired at that time from Government and put Dr. Judd in, but it was for a short season.

Mr. Ten Eyck. I will read also from a thing headed "official correspondence," relating to the late provisional cession of the Sandwich Islands. Published by authority. I had better, however, to show the connections, read the letter which called this answer out:

HER BRITANNIC MAJESTY'S SHIP, CARYSFORT, {  
Woahoo, 16th of February, 1843. }

SIR,—I have the honor to acquaint your Majesty of the arrival of this port of H. B. M.'s Ship under my command, and according to my instructions, I am desired to demand a private interview with you, to which I shall proceed with a proper and competent Interpreter.

I therefore request to be informed at what hour to-morrow it will be convenient for Your Majesty to grant me that interview.

I have the honor to remain,

Your Majesty's most ob't. and humble servant,  
GEORGE PAULET, Captain.

TO HIS MAJESTY KAMEHAMEHA III.

And the reply is dated the 17th February, 1842; it is from the King and Premier:

HONOLULU, February 17, 1843.

Salutations to you Lord George Paulet, Captain of Her Britannic Majesty's Ship Carysfort.

SIR,—We have received your communication of yesterday's date, and must decline having any private interview, particularly under the circumstances which you propose. We shall be ready to receive

any written communication from you to-morrow, and will give it due consideration.

In case you have business of a private nature, we will appoint Dr. Judd our confidential agent to confer with you, who being a person of integrity and fidelity to our government, and perfectly acquainted with all our affairs, will receive your communications, give you all the information you require (in confidence) and report the same to us.

(Signed) KAMEHAMEHA III.,  
“ KEKAULUOHI.

I hereby certify the above to be a faithful translation,  
G. P. JUDD, Translator and Interpreter for the Government.

Mr. R. Is it a resolution by the legislature?

Mr. T. E. Yes.

Mr. R. Then, it is in the book of laws which has been filed.

Mr. T. E. There can be no dispute about this, at all events. It is a resolution passed—I do not know when—by the legislature. The resolutions to which I would call the attention of the arbitrators, is the 3rd resolution:

“ That His Majesty’s Commissioners have deserved well of the Hawaiian nation, for the zeal and ability with which they have discharged the important duties entrusted to them by His Majesty the King.”

*Dr. R. W. Wood re-called to the stand.*

Mr. Ten Eyck. You were telling us before, when you came here—the fact is I do not recollect how far we did get along.

Mr. Ricord. I would simply remark to the arbitrators, that since I have not objected to Dr. Wood and examined him on his *voir dire*, there are some notes of things which I would on that account, more particularly, call his attention to, on the cross-examination. They are notes made on cool reflection, and as I would wish to have them by me, when I cross-examine him, I will leave Mr. Hitchcock to take minutes of what may be asked whilst I go for them.

Mr. Ten Eyck. I will wait Mr. Ricord.

Mr. Ricord. No, go on.

Mr. Ten Eyck. When we left off with Dr. Wood, before, I had asked him this question: How has he expressed himself with regard to the Belgian Contract? But previous to that, he had stated that he had lived here since 1839, etc., etc.; (see page 194) and after that I asked him the question above. How has he expressed himself with regard to that contract? Whereupon, Mr. Ricord objected, and the question has remained unanswered. Dr. Wood, will you state when, to the best of your recollection, the general features of that Belgian Contract were first publicly known here?

Dr. Wood. I cannot state positively, but I think as far back as the fall of 1843, or spring of 1844.

Mr. T. E. Have you talked of that matter frequently with Dr. Judd?

Dr. W. I recollect its having been a frequent subject of conversation.

Mr. T. E. As early as the spring or summer of 1844?

Dr. W. Yes.

Mr. T. E. When did Mr. Marshall return from Europe?

Mr. Marshall. In the spring of 1844.

Mr. Ten Eyck. At that time, did Dr. Judd appear to understand fully the general plan of that contract, as it had been entered into by Messrs. Richards, Haalilio and Brinsmade?

Dr. Wood. It is so far back, I cannot state from any one conversation which I had from Dr. Judd, but my impression is, that its general features were understood, that is, that Mr. Brinsmade was negotiating with a joint stock company in Brussels, for the sake of introducing capital here, with a view to carry out agricultural purposes.

Mr. T. E. Was it understood by you in those conversations, that sale had been made by Mr. Brinsmade, on behalf of Ladd & Co., to a company in Europe?

Dr. W. Yes, I recollect the sale having been alluded to.

Mr. T. E. The sale of what?

Dr. W. The sale of Ladd & Co.'s property, and of the contract of 1841.

Mr. T. E. What property?

Dr. W. All their property on the Sandwich Islands.

Mr. T. E. The store in town?

Dr. W. Yes, the store in town.

Mr. T. E. The wharf?

Dr. W. Yes, the wharf, and the plantation at Koloa.

Mr. T. E. And the contract of 1841?

Dr. W. Yes, I think so. I do not recollect now. I could not state now, that the contract of 1841 was mentioned, it is so far back, but all Ladd & Co.'s property.

Mr. T. E. All their property? Did he appear to be better informed in regard to that matter than any one else?

Dr. W. It was my impression that he was. He was at that time very intimate with Ladd & Co., and had the means of knowing what they knew.

Mr. T. E. What position did he occupy in the Government at that time?

Dr. W. He was a prominent man in Government, I do not recollect whether he had received his appointment as Secretary of State for Foreign Affairs. I could recollect by —

Mr. T. E. According to testimony given here, it appears that Mr. Ricord came here in the spring of 1844, you may recollect by that circumstance perhaps?

Dr. W. I think he was secretary for foreign affairs.

Mr. T. E. Secretary of State?

Dr. W. Yes, Secretary of State.

Mr. T. E. Did he speak of having received letters during 1844, from Mr. Richards in Europe?

Dr. W. I understood, at the time, that Dr. Judd had received letters from Mr. Richards, but I would not state positively that I was so informed by Dr. Judd, himself.

Mr. T. E. Was it generally understood and spoken of by Dr. Judd, that Mr. Richards and Haalilio were parties to that contract?

Dr. W. My impression is that it was understood that they were. I could not state certainly. They were the agents of Government abroad at that time, and it was known here that Mr. Richards had been at Brussels to meet Mr. Brinsmade on the business of that contract.

Mr. T. E. Was it understood here that they had signed the contract, and were parties to it?

Dr. W. According to the best of my recollection it was.

Mr. T. E. Did Dr. Judd say so?

Dr. W. It is so far back I cannot state positively.

Mr. T. E. What is your impression about it?

Dr. W. My impression is that it was known to Dr. Judd that they had signed it. My impression is that Dr. Judd was aware of it.

Mr. T. E. Did he ever speak of it to you, that is the point?

Dr. W. I think the Doctor was rather reserved about that time. He stated that he was as well, or better informed than Ladd & Co.

Mr. T. E. About the execution of that contract? In any conversation with Dr. Judd you may have had, how did he appear about it, confident that it would go into operation or otherwise?

Dr. W. According to my recollection, he regarded it as a matter of course, up to the summer, say spring of 1844. Subsequently to that he expressed doubts.

Mr. T. E. Was any thing said about expecting a vessel on, by him?

Dr. W. Yes, sir.

Mr. T. E. Any thing about emigrants?

Dr. W. I do not recollect about the emigrants. I recollect that he spoke of Mr. Richards having sent machinery by the vessel to be sent out by the Belgian Company.

Mr. T. E. Was he anticipating the arrival of such a vessel with sugar mills in her?

Dr. W. I understood so at the time

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tion at the shipment of those articles of machinery for Government, he thought that Government did not need them.

Mr. T. E. Had you frequent conversations with him on this subject, during the summer of 1844?

Dr. W. Yes, sir.

Mr. T. E. Well, do you know whether, in those conversations, you understood from Dr. Judd that this Belgian Company was going into operation?

Dr. W. I understood it was at that time.

Mr. T. E. You understood that the Belgian Company was going into operation? From whom did you understand it was going into operation?

Dr. W. I understood it from Dr. Judd and from Ladd & Co.

Mr. T. E. Was any thing ever said by Dr. Judd in those conversations about Mr. Richards and Haalilio, what they had done there?

Dr. W. The conversation was not very full, in regard to Mr. Richards and Haalilio. There were frequent allusions made, but so far back I cannot recollect the particulars.

Mr. T. E. Since the sale of Ladd & Co.'s property, in the fall of 1844, have you had any conversation with him?

Dr. W. About the time of the sale of those properties, I had frequent conversations with him, and perhaps two or three subsequently.

Mr. T. E. Well, subsequent to that sale, in any conversation you had with him, had his views changed, with regard to the Belgian Contract, from what he had expressed before?

Dr. W. I thought he was not friendly to the Belgian Contract at that time.

Mr. T. E. Subsequent to the sale?

Dr. W. Yes.

Mr. T. E. That he was not friendly? Did he express himself opposed to it?

Dr. W. He expressed the opinion, that it would not go into operation.

Mr. T. E. That is not what I asked. Did he express himself opposed to the contract, and desirous of an opportunity of defending it?

Dr. W. The Doctor never stated that he intended to defeat the contract, or that he was opposed to it, but the impression left on my mind, from conversations with him on the subject, was that he was opposed to the Belgian Contract.

Mr. T. E. How was that impression derived?

Dr. W. From conversation.

Mr. T. E. That he was opposed to the conversation leave any impression on your mind to evade it?

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Dr. W. No, sir, he did not intimate that he intended to evade it at that time.

Mr. T. E. Did he at any other time?

Dr. W. No, sir.

Mr. T. E. What did he say, Doctor, in regard to that matter any how?

Dr. W. He stated it as his opinion, in the fall of 1844, that it would not go into operation.

Mr. T. E. And what reason did he give?

Dr. W. He did not assign any reason then. Subsequently, in the summer, I think, of 1845, he stated as a reason why he thought it would not go into operation, that he thought that he had no doubt agents might be sent out, but when those agents arrived, they would see that the property was not so productive as represented, and that Ladd & Co. had failed, and that they would go away disgusted.

Mr. T. E. From the conversation you have had with Dr. Judd in reference to Ladd & Co.'s property, what did you understand to be the object of Government in selling their property?

Dr. W. I understood the object to be at the time, as Dr. Judd and Mr. Ladd and Mr. Hooper were on intimate terms and a very friendly understanding existing between them, that the object was the protection of the property, to prevent its being sacrificed by importunate creditors.

Mr. T. E. Was that impression obtained before or subsequent to the sale?

Dr. W. Previously.

Mr. T. E. After the property had been sold, what was the impression left on your mind by those conversations with Dr. Judd, as to the object of that sale of Ladd & Co.'s property?

Dr. W. At the attachment and sale of the store, the impression was the same as at first, though I had doubts after the sale of the Koloa estate. I gave my opinion that the object was to defeat the execution of the Belgian Contract. Perhaps I should have said also that another object was to secure the debt of Government.

Mr. T. E. Well, sir, was that opinion based upon any thing Dr. Judd had said to you in regard to it?

Dr. W. It was inferred in conversation with Dr. Judd, and subsequent acts in regard to Ladd & Co.

Mr. T. E. Have you ever had any conversation with Dr. Judd in regard to his views in reference to Ladd & Co., or what course of proceeding he thought the Government would take towards them, and

Some time subsequent to the sale of the store, and per-  
f the Koloa estate, he stated, as his opinion, that the  
would into operation, and that in that case,  
and would not pay their debts, and

that it would make no difference to them. He was friendly, I suppose, at that time—and that the Government might as well have it as any body else. He stated what his plan was with reference to Ladd & Co., which was, that after he had stripped them of their property and debts, they might become employees of Government.

Mr. T. E. How did you understand about stripping them of their debts?

Dr. W. I did not understand. I said it was easy to strip them of their property, but how could he relieve them of their liabilities. He said we will devise some means to rid them of their liabilities.

Mr. T. E. What did you understand by him?

Dr. W. The Government. I stated to Dr. Judd that there was no bankrupt law; he replied, we will see about that, and the conversation ended.

Mr. T. E. What was that remark? After he had got them stripped of their property and debts, what then?

Dr. W. Then they would be free from debt, but would have no means, and would be in a situation, as I understood him, to come into the service of Government. I understood that he meant after that to have provided them with some business in the employ of Government.

Mr. T. E. What time do you say this conversation took place?

Dr. W. I think it was in the latter part of November or the very first of December, 1844.

Mr. T. E. Was it prior or subsequent to the sale of the property?

Dr. W. I am not positive. I think it was a short time previous to the Koloa estate.

By the Board. Did he say he would strip them or they would be stripped?

Dr. W. The subject of conversation was the sale of the Koloa estate. He had determined on that contrary to the wishes of Mr. Ladd. I recollect presenting some reasons why he might with propriety defer the sale, stating that the sale would be injurious to the estate, and would look like unnecessary severity to Ladd & Co. He said no, and expressed himself friendly to Ladd & Co. He said I am doing the best thing that can be done for them. I have come to the conclusion that the Belgian Contract will fail; in that case Ladd & Co. are insolvent, etc.; and he said it makes no difference to them where the property goes. I understood the purpose, at least he professed it to be.

Mr. T. E. Should you understand this to be the determination of the Government? Did you so understand it?

Dr. W. To sell the property?

Mr. T. E. Yes.

Dr. W. Yes, I so understood it.

Mr. T. E. What were the reasons which you say he urged why



they would give up this contract? You stated something about their coming out here and going away in disgust, and stated some reason.

Dr. W. He said that the Belgians would come out here, see that the property was not so productive as had been represented, and the house having failed would give a bad impression. They would see that the property had been sold and would go away in disgust.

Mr. T. E. When was this conversation?

Dr. W. I think that was in the spring or summer of 1845.

Mr. T. E. What did you gather from this conversation with him to be the object in prosecuting those sales? What was the impression left on your mind by this conversation with regard to the sale of the property?

Dr. W. My impressions were at the time that Government had changed their views in regard to the Belgian Contract, and availed themselves of the liabilities or rather the exposure of Ladd & Co. to their liabilities, to defeat it.

Mr. T. E. The Contract?

Dr. W. Yes.

Mr. T. E. Had you ever had any conversation with Mr. Ricord on that subject?

Dr. W. Of the Belgian Contract?

Mr. T. E. Yes, sir.

Dr. W. I have heard allusions made it to by Mr. Ricord.

Mr. T. E. In conversation with Mr. Ricord, how has he expressed himself in regard to it?

Dr. W. He has expressed doubts that it would go into operation.

Mr. T. E. Has he expressed himself hostile to it?

Dr. W. He did not.

Mr. T. E. In regard to the sale of the Koloa plantation, the sale of the mortgaged property, that is, the first sale, did you make any arrangements in regard to the purchase of that property?

Dr. W. No.

Mr. T. E. Did you make any arrangements to enable any one else to purchase it?

Dr. W. I offered Mr. Burnham to furnish him with facilities through the house of Messrs. C. Brewer & Co., which would enable him to purchase it.

Mr. T. E. Did he carry out this purpose?

Dr. W. He did not. Mr. Burnham made other arrangements.

Mr. T. E. What arrangements?

Dr. W. He made arrangements with Messrs. Paty & Co.

Mr. T. E. For obtaining credit?

Dr. W. Yes.

Mr. T. E. Through whom?

Dr. W. I do not know.

Mr. T. E. A day or two prior to the sale of that property, had you any conversation with Dr. Judd in regard to that sale?

Dr. W. I had frequent conversations in regard to that sale.

Mr. T. E. Who was this person to whom you offered assistance?

Dr. W. Mr. Charles Burnham.

Mr. T. E. Did you a day or two prior to the sale of that estate, have any conversation with Dr. Judd and Mr. Burnham in regard to it?

Dr. W. Yes.

Mr. T. E. Do you know any thing of any bargain having been made between Dr. Judd and Mr. Burnham with regard to purchasing?

Dr. W. There was an agreement made between Dr. Judd and Mr. Burnham, which provided for Mr. Burnham becoming purchaser conditionally, according to the contract made between them.

Mr. T. E. In that conversation did Dr. Judd act authoritatively, or appear to do so? I mean was this bargain which Mr. Burnham made with Dr. Judd, made with him individually or as an agent of Government?

Dr. W. I understood it to be as an agent of Government, as President of the Treasury Board. I believe there is a written document which would show in what capacity Dr. Judd acted.

Mr. T. E. Was there any arrangement made at that time with Mr. Burnham, that the Government should not be a competitor with Mr. Burnham at the sale if he should wish to be the purchaser?

Dr. W. Yes.

Mr. T. E. What was the understanding? What was the bargain in regard to that matter between Dr. Judd and Mr. Burnham?

Dr. W. Mr. Burnham was given to understand by Dr. Judd that if he made that arrangement Government would not compete with him.

Mr. T. E. As a bidder?

Dr. W. Yes. In case he chose to become the purchaser at a certain price, and if it was run up higher than he liked to give he was to buy it for Government.

By the Board. Did you hear that from Dr. Judd?

Dr. W. Yes.

Mr. Ten Eyck. Was it in consequence of his arrangement with Dr. Judd, as President of the Treasury Board, that the arrangement which you had made to assist him through Messrs. Brewer & Co. was not carried out?

Dr. W. No. He was at liberty still to carry out the arrangement made with me.

Mr. T. E. But it was not carried out?

Dr. W. No. After this arrangement he changed his mind.

Mr. T. E. Up to that time he meant to avail himself of your credit?

Dr. W. I supposed so until I heard of the other arrangement. !

ought to state there was one reason which might have operated with him, that is, that he had applied to Mr. Johnson, a member of the firm who knew nothing of this arrangement, and Mr. Johnson expressed some doubts as to the wish of the house to furnish him with the means on credit, not knowing of my arrangement.

Mr. T. E. Was there any thing said by Dr. Judd to Mr. Burnham as to the probability of his having anybody to compete with him at the sale?

Dr. W. I think that Dr. Judd said that the probability was there would be no other bidder.

Mr. T. E. Any reason assigned?

Dr. W. No reason given.

Mr. T. E. Was any thing said about the vessel going down there?

Dr. W. The vessel was to leave in the evening about sunset, and I understood from Dr. Judd that if any person applied to him they could get passage in the vessel, but the probability was no one would apply.

Mr. T. E. Did they seem to have any solicitude about that?

Dr. W. I think it was the wish of Dr. Judd that Mr. Burnham should become the purchaser.

Mr. T. E. Did he evince any solicitude about people going down?

Dr. W. I do not recollect. My impression is that the Doctor—I know it was his wish that Mr. Burnham should become purchaser of the property.

Mr. T. E. How long before the sale did this conversation take place?

Dr. W. A few days.

Mr. T. E. Was it over two days?

Dr. W. The last conversation was on the evening of the day that Mr. Burnham sailed. It was in the first part of December.

Mr. T. E. Was it more than two days before the sale?

Dr. W. I think not more than two or three days.

Mr. T. E. To whom did that vessel belong that was going then?

Dr. W. She was a native vessel.

Mr. T. E. Did she belong to Government?

Dr. W. I am not sure that she belonged to Government.

Mr. T. E. What is your belief or impression?

Dr. W. I have no positive knowledge about it. She was a vessel under the control of Dr. Judd.

Mr. T. E. What was she sent down there for?

Dr. W. I understood to give Mr. Burnham a passage, and to take his freight, that was the principal object of the trip. She might have had other business.

Mr. T. E. Did the vessel sail that evening?

Dr. W. She did.

Mr. T. E. Where did Mr. Burnham get on board of her?

Dr. W. I think he took a boat and went out, for she had gone out.

Mr. T. E. Where was the vessel?

Dr. W. I think outside the reef.

Mr. T. E. At anchor?

Dr. W. I think not.

Mr. T. E. Did you understand from the conversation of Dr. Judd and Mr. Burnham, that she was outside waiting for Mr. Burnham to come out?

Dr. W. No. She was at the wharf when the last conversation took place.

Mr. T. E. Was this business between Mr. Burnham and Doctor Judd, and all this arrangement, hurried through; or was it very considerably and carefully arranged? Was the matter hurried through?

Dr. W. They were a day or two completing the arrangement. Mr. Burnham left immediately after the arrangement—at his earliest opportunity.

Mr. T. E. Do you know whether any effort was made to keep the matter of the sale a secret in town?

Dr. W. I do not know that any effort was made to keep it a secret.

Mr. T. E. Was it generally known here that there was a vessel to sail?

Dr. W. It could not have been generally known—I think she was not advertised.

Mr. T. E. Well, sir, from the conversation between Mr. Burnham and Dr. Judd in regard to this sale, and his going down there, and his acts and conduct at the time, what did you understand? How did you understand it was intended to manage the sale in regard to having competitors at that auction?

Dr. W. I understood it was the wish of Dr. Judd not to have competitors there. I believe it would have been the purpose of Dr. Judd to keep the control of the property in his own hands.

Mr. T. E. Now, Doctor, you must have had some impression in regard to the conduct of Dr. Judd and Mr. Burnham, and their acts and conversations in regard to that sale, and the manner in which it was to be conducted; whether it was to be done secretly without competitors or otherwise. Will you state your impression?

Dr. W. I believe it was the purpose to have no more opposition than was required, though there was no statement made by Dr. Judd that authorized me to say that such was really the case.

Mr. T. E. What made you come to that conclusion?

Dr. W. Facts and circumstances connected with the sale.

Mr. T. E. Was that sale advertised, do you know, in the newspaper?

Dr. W. It was not.

Mr. T. E. It was not. Neither in the Polynesian or Friend?

Dr. W. I think not.

Mr. T. E. Was there any other newspaper?

Dr. W. I believe not at that time, unless it was the native newspaper.

Mr. T. E. Had you at any time intended to become a purchaser at that sale?

Dr. W. I had entertained such a purpose when I heard the property was to be sold.

Mr. T. E. Why did you not carry out your desire to become a purchaser?

Dr. W. Mr. Burnham when he came up made unfavorable representations of the value of the lease for one year. I had also some doubts of the legality of the sale, and some fear that I might be involved; and when I knew the views of the Government in regard to it, I did not wish to purchase it, subjecting myself to any conditions which the Government might see fit to impose.

Mr. T. E. Did you suppose it would be contrary to the views of Government to have you become the purchaser?

Dr. W. No. I was at liberty to attend the sale, and was apprized of it, and could have attended and purchased.

Mr. T. E. Why did you not?

Dr. W. I understood it to be the purpose of Dr. Judd to buy it on account of Government, after that conversation with Dr. Judd and Mr. Burnham.

Mr. T. E. Do you suppose you would have stood any chance at all to have been the purchaser if you attended the sale?

Dr. W. I abandoned all intention to attend the sale when I heard what Dr. Judd had determined.

Mr. T. E. If you had not had that idea would you have become a competitor?

Dr. W. I cannot say what I might have done.

Mr. T. E. What is the probability?

Dr. W. If I had known nothing about it I should probably have attended or instructed an agent at Koloa to attend the sale.

Mr. T. E. Had that conversation between Dr. Judd and Mr. Burnham no influence to deter you from becoming a competitor?

Dr. W. Most certainly. I stated before when I knew it was the purpose of Government to buy in the estate, I presumed they would give more for it than I was prepared to give.

Mr. T. E. Do you know how much Mr. Burnham was to bid by the arrangement made between him and Dr. Judd?

Dr. W. Mr. Burnham stated a hundred or a hundred and fifty dollars—he would not go over that.

Mr. T. E. That was on his own account?

Dr. W. Yes.

Mr. T. E. Did you understand at the time what was to be sold?

Dr. W. Yes; the lease of the plantation for one year.

Mr. T. E. Did you attend the last sale—the sale of the premises in April, 1845?

Dr. W. I did not.

Mr. T. E. Had you designed becoming a purchaser at that sale?

Dr. W. Yes, I instructed an agent at Koloa to attend the sale and purchase it?

Mr. T. E. Well, did he do so?

Dr. W. He did.

Mr. T. E. Had you any conversation with Dr. Judd in regard to that sale?

Dr. W. I called on Dr. Judd once to ascertain what property was to be sold in order to be able to form an opinion of what I might give for it. Dr. Judd declined any farther information than was conveyed in the advertisement, which was not satisfactory. He did not know that he was bound to give me any more information than what was printed.

Mr. T. E. What was the arrangement made between Dr. Judd and Mr. Burnham in regard to the sale? What was Mr. Burnham to do?

Dr. W. By the contract he was first to pay himself fifteen hundred dollars due him by Ladd & Co.; next the current expenses; or I ought to have said the current expenses first, and then the fifteen hundred dollars: next to redeem all the paper money afloat, represented to be from six to eight thousand dollars, but which proved to be about two thousand dollars, cash value, giving the money for it, or about one half of what it had been stated: next to keep the plantation under a state of good cultivation through the year, and next, if anything was left, to do what he pleased with it. In the current expenses his salary was included.

Mr. T. E. Wherein were the Government to be benefitted by this operation?

Dr. W. I understood the Government were responsible for this paper money, and that it was desirable it should be called in, and it was to the interest of the plantation that it should be, it could not have gone on otherwise.

Mr. T. E. Did Mr. Burnham go on under that arrangement?

Dr. W. He did.

Mr. T. E. Did he become purchaser?

Dr. W. He did.

Mr. T. E. Do you recollect how much for?

Dr. W. I do not recollect; it was not exceeding \$150,00.—I think at \$100—from that to \$150.

Mr. T. E. Do you know sir, whether he carried out those terms?

Dr. W. He carried them out with the exception of one condition,—that he should keep the cane in good cultivation, which he did not do. He paid very little attention to the cane. He took in the crops.

Mr. T. E. Have you seen and examined a report made to this Government by its agent Mr. De Fiennes, in regard to the value of the Koloa plantation?

Dr. W. I have.

Mr. T. E. Have you had charge of that plantation since Mr. Burnham left?

Dr. W. I have for the last year.

Mr. T. E. Well sir, from your knowledge of the plantation, are the conclusions to which Mr. De Fiennes arrived in that report as to the value of the plantation just and correct?

Dr. W. His report of the nett proceeds of the plantation, carried on on its present scale was correct. The conclusion to which he came was correct as far as my knowledge of the property extends. He made an estimate of the value of the property, or what it would nett, carried on on a more extended scale, which would require a farther outlay of capital. It is a mere matter of opinion whether it could be made to nett so much, but from what knowledge I have of the plantation, I have no reason to doubt the soundness of his statement.

Mr. T. E. Well, I will ask your opinion; from your knowledge of that plantation what would be its fair value,—the fair value of that plantation under proper and judicious management, estimating the value from the yearly nett profit?

Dr. W. Some people are satisfied with a moderate interest, and some look for a high one.

Mr. T. E. I ask your opinion.

Dr. W. I suppose the plantation, carried on on its present scale, might be made to nett \$8,000 a year, and might perhaps nett more. I think the year Mr. Burnham carried it on it netted \$10,000. The present year the accounts are not closed, but the proceeds this year will not be so much as they were when Mr. Burnham was there.

Mr. T. E. It netted under Mr. Burnham's management \$10,000?

Dr. W. Yes, Mr. Burnham so stated to me.

Mr. T. E. You would estimate it at \$8,000 a year,—that would be the lowest estimate?

Dr. W. That would be a safe estimate, after perhaps the next year. Next year it will not nett so much. It has been going behindhand the last three years; no attention has been paid to crops, and nothing planted till this year.

Mr. T. E. What has this been owing to?

Dr. W. The year previous to Mr. Burnham's having charge of it there was no cane planted by Ladd & Co.

Mr. T. E. Why not?

Dr. W. I do not know why not.

Mr. T. E. Well, the year that Mr. Burnham kept it did he plant any?

Dr. W. He did not.

Mr. T. E. Am I to understand that it requires cane to be planted every year?

Dr. W. Yes, in order to sustain the crops.

Mr. T. E. And that has been neglected for the last two years?

Dr. W. For the last three years. For the last three years there has been a falling off in the amount of sugar produced.

Mr. T. E. Owing to that circumstance?

Dr. W. Yes.

Mr. T. E. If the planting of cane is attended to is there soil there to grow it in?

Dr. W. Yes, it requires to be properly taken care of, when it will grow, certainly.

Mr. T. E. That is what I wanted to know. Did you ever at the time when you made arrangements—but first of all, did you ever talk of leasing that estate from Government after it was sold?

Dr. W. I leased it from Dr. Judd in 1845.

Mr. T. E. Had you any conversation previous to leasing it, and subsequent to the sale?

Dr. W. I made a proposition to take it for ten years;—at least, I enquired of Dr. Judd what he would lease it for, for ten years.

Mr. T. E. What was his idea of the value?

Dr. W. I do not know what his idea of the value was. He proposed to lease it to me, granting me the possession of it against the claims of Ladd & Co.; after the first year or two, for \$5,000 in advance; for the first year, I was to pay \$3,600, which it was sold for, and the following year, I think I was only to pay the annual rent, but after that \$5,000, in advance, for the use of it.

Mr. T. E. At the time you applied to Dr. Judd in regard to the second sale to ascertain what was to be sold, what did he say to you sir? Did you get any information out of him?

Dr. W. Not in regard to what was to be sold.

Mr. T. E. Was that your business?

Dr. W. Yes.

Mr. T. E. Why did not he give you information?

Dr. W. He seemed to have some solicitude, lest he might, by giving me the information, commit himself in some way, and that advantage might be taken of it. I did not press the matter any farther.

Mr. T. E. Did you get any information in regard to what was to be sold?

Dr. W. No sir, Doctor declined to give it, and referred me to the paper where the advertisement was. What I wished to be more



particularly informed of, was whether Mr. Burnham would be held to his engagement, or whether, when I took it, it would release Mr. Burnham of his engagement.

Mr. T. E. Dr. Wood, have you ever had any conversation with Mr. Ricord in reference to Ladd & Co.'s affairs?

Dr. W. Yes.

Mr. T. E. When?

Dr. W. In the summer of 1845.

Mr. T. E. What did he state to you, sir, in regard to that business?

Dr. W. I had not frequent conversations, I do not recollect but one with Mr. Ricord, and that was about the time that Mr. Ricord had proposed to Mr. Ladd to put his property into chancery. Mr. Ricord thought it would be for the interest of the firm to make an assignment of their property for the purpose of settlement, and wished me to use my influence with the firm, to induce them to accede.

Mr. T. E. What did he propose that they should do it for?

Dr. W. He made no promises, but he expressed it as his opinion, that it would be decidedly for the advantage of Ladd & Co. to deliver up all their real property, and that Government appreciated the services which Ladd & Co. had rendered the Government, and that if Ladd & Co. would do this, Government would be liberal towards them. He wished Ladd & Co. to have confidence, and give Government the opportunity to do for them a generous act. I do not recollect any other conversation relative to Ladd & Co.'s affairs.

Mr. T. E. Was any thing said at that conversation about paying their debts?

Dr. W. There was nothing said that would bind the Government, I inferred it. I think that was the impression intended to be made.

Mr. Brinsmade. I would like to ask, Dr. Wood, did you have any conversation with Mr. Richards about the Belgian Contract after he returned?

Dr. Wood. I had, soon after his arrival.

Mr. Brinsmade. What views did he express to you in regard to that contract?

Dr. Wood. In reference to your arrangements, and as to the time when they might be expected to be finished, he made a statement something like this: That if any confidence could be placed in the promises of the best men in Belgium, Brinsmade would succeed.

Mr. B. Was that after he had time to communicate with the Government on the subject?

Dr. W. I think, he added, that from his experience, the promises of men in Europe were sometimes like the promises of men on the Sandwich Islands.

Mr. B. What did he mean by that?

Dr. W. That he had not entire confidence in your success, but that if any reliance could be placed in the promises of the best men in Belgium, you would succeed. I inferred from the subsequent remark, that he had been disappointed himself, and had met with delays in the accomplishment of his mission.

Mr. B. Did you, with him, go into detail as to the arrangement of that contract, or its particulars?

Dr. W. No, I do not recollect.

Mr. B. Did he, or any body, after his arrival, convey to you any new ideas with regard to its provisions, or had you, before his return as full information as you had afterwards, with regard to its general feature?

Dr. W. He did not speak much about the Belgian Contract. He spoke of the Koloa plantation as being an object to be favored by the Government, and he considered the attempt made there valuable in regard to the resources of the Islands, and that the Government would and were determined to promote it.

Mr. B. In your previous conversation with Dr. Judd, previous to Mr. Richards' arrival, and the attachment on our property, did you find that Dr. Judd was as fully acquainted with my operations in Belgium as you were yourself?

Dr. W. I presume more so, I do not know that I was kept fully informed.

Mr. B. I will inquire, if he ever expressed to you any expectations of that contract going into operation here? Did he ever express any arrangements which he had himself made for carrying it out here?

Dr. W. I think he had expressed expectations of its going into operation, but I do not recollect of his having informed me of any arrangements which he had made himself in regard to it. I understood at the time that Mr. Richards had been instructed by the Government in regard to certain points in that contract, but I do not know from whom I had the information.

Mr. B. How early did you hear Dr. Judd express any dissatisfaction with the Belgian Contract, as he understood it?

Dr. W. I never heard any expressed until subsequent to the sales of the property. By the way, previously to that, some months, my impression is he was less favorable to it, but I do not recollect his having expressed himself hostile to the contract.

Mr. B. Were you familiar with the arrangements proposed by Dr. Judd and Mr. Ricord for securing themselves for Ladd & Co.'s indebtedness to the Government—were you familiar with the arrangements between Dr. Judd and Mr. Ricord and Mr. Ladd?

Dr. W. Yes.

Mr. B. What means of knowing had you?

Dr. W. I derived my information partly from Dr. Judd and partly from Mr. Ladd, perhaps mostly from Mr. Ladd at that time.

Mr. B. What did Dr. Judd profess to you to be his intentions in that arrangement for his security towards Ladd & Co.?

Dr. W. Friendly.

Mr. B. In what shape friendly? How did he intend to be friendly in that arrangement?

Dr. W. To protect their property from being sacrificed by other creditors by interposing a judgment in favor of the Hawaiian Government. I think I was present when some conversation took place between Mr. Ladd and Dr. Judd, in reference to the amount of indebtedness of Ladd & Co. to the Hawaiian Government, and that the amount was swelled, and items were included, which were not due, and could not be legally recovered.

Mr. B. For what purpose?

Dr. W. I do not know. It was not considered a matter of importance, because it was stated at the time that judgment would not be enforced contrary to the views of Mr. Ladd. That seemed to be the understanding.

Mr. B. Did you yourself have confidence at that time in those friendly regards of Dr. Judd towards the house of Ladd & Co.?

Dr. W. I did.

Mr. B. What circumstance first shook your confidence in that friendly disposition?

Dr. W. I was in Dr. Judd's or Mr. Ricord's office, about the time the levy was made upon the store. The sheriff had returned and not brought the key; Mr. Ricord made inquiries about the keys, and by his serious manner, I found it was a more serious matter than Ladd & Co. had apprehended. I informed Mr. Ladd of my apprehensions, he smiled and said there was an understanding between himself and Government. His reply was, the Government know what they are about. He seemed to be perfectly secure.

Mr. B. Do you know if Dr. Judd made particular inquiries to find out if there was any property of Ladd & Co.'s which had not been recovered by the attachment of the sheriff?

Dr. W. He made particular inquiries in reference to the Koloa plantation?

Mr. B. What seemed to be, or what was the object of those inquiries.

Dr. W. To ascertain whether the property was exposed. Mr. Ladd was of the opinion it was not. He said the property was mortgaged for all or more than all it would sell for at auction. Dr. Judd took a different view of the matter of the mortgages showed to Mr. Ricord, in order to settle that point, Mr. Ricord came to the conclusion that the property was exposed, and recommended that a levy should be made upon it.

Mr. B. In order to protect it from any claims from any other creditors?

Dr. W. Yes.

Mr. B. Did you suppose, at that time, that those views of protection had any reference to the execution of the Belgian Contract?

Dr. W. I supposed the object was to keep the property in such a condition that Ladd & Co. would have it in their power to give it over to the Belgian Company.

Mr. B. Was this impression destroyed by the conversation you allude to in which Dr. Judd revealed the views of Government?

Dr. W. It was. Dr. Judd and Mr. Ladd had both been anxiously waiting the arrival of news from Mr. Brinsmade, and the object I understood, to be to give Mr. Ladd further time.

Mr. B. Well sir, at the time of the sale of the goods and effects, in Honolulu, do you know if Mr. Burnham was a purchaser with a view to his future operations in Koloa?

Dr. W. He was.

Mr. B. Did you know, at that time, any arrangement between Dr. Judd and Mr. Burnham for Mr. Burnham to purchase the plantation?

Dr. W. It was the expectation then, that Mr. Burnham would become the purchaser, or that he would, at least, have the superintendence of the plantation. He seemed better qualified to conduct the business than any other person.

Mr. B. Was this sale before the sale of the Koloa plantation?

Dr. W. Before.

Mr. B. What statement was made to yourself and Mr. Burnham, in this conversation, respecting the sale? What statement was made by Dr. Judd of the property to be sold at Koloa?

Dr. W. At the first sale?

Mr. B. The first sale?

Dr. W. The lease of the plantation.

Mr. B. Was there any more extended description of property exhibited to you or any body else that you know of?

Dr. W. No, that was all, I believe.

Mr. B. Was that represented to you to be the property that was under a levy in execution of their debt, or was it represented to be the property levied upon by the sheriff?

Dr. W. I so understood it to be.

Mr. B. In the arrangements for sale with Mr. Burnham, was the arrangement for the entire sale of the entire levy. Was all the property to be sold that had been attached in execution of that levy?

Dr. W. I do not know what property had been attached.

Mr. B. The lease of all the plantation for one year with all the properties?

Dr. W. Yes.

Mr. B. Do you know if Dr. Judd held Mr. Burnham to any engagement not to exceed in his offer \$150?

Dr. W. He did not. He was at liberty to bid as much as he chose to. In case other purchasers appeared at the sale and ran the prices up above what he was willing to give, he was then to buy it for Government.

Mr. B. Did Mr. Burnham spend the whole year there that he negotiated for?

Dr. W. He did not. I think he gave up the plantation some time in October. He stated that he intended to retire, and proposed to sell to me the remainder of his lease.

Mr. B. You purchased it?

Dr. W. I demurred some to purchasing the remainder of his lease, as it was only for two months, and no income, but all expense, but as it was necessary to put the plantation in a proper condition, I acceded. He gave that as a reason why it was worth a good deal more to me than he asked. I also paid him for putting the mill in a state of repair, and I paid Mr. Lindsey wages from the beginning of October.

Mr. B. At the time that Dr. Judd revealed to you the intention of the Government to strip Ladd & Co. of their property and their debts, and to provide by some act of the Government to shield us from the claims of our creditors, do you know whether either member of my house, that was here at the time, entertained that idea?

Dr. W. I know they did not. I do not know that Dr. Judd intended to protect Ladd & Co. from their creditors by any act of Government, that is to say, a bankrupt act. I was in doubt and recollect making known those views of Dr. Judd to Mr. Hooper, and Mr. Hooper manifested considerable indignation at what he supposed might have been the purpose of Dr. Judd to protect them. He remarked that he lived only to pay his debts, and would go into a situation under Government, on a salary just enough to support him, provided he could pay his debts. Doctor was on friendly terms with Mr. Hooper then, in the evening he came in and there seemed to be a misunderstanding between him and Mr. Hooper, and I repeated the conversation to them as I understood it.

Mr. B. When the property was sold in Honolulu, here, was it sold subject to a rent of \$1,500? Do you know?

Dr. W. It was subject to a rent accruing to the Government, of \$1,500.

Mr. B. What did you find to be the fact?

Dr. W. I would state in connection with that, that Dr. Judd labored under a mistake when he sold it subject to a rent of \$1,500. I think he believed it was exposed to that rent, but he afterwards learned it was not.

Mr. B. Was any statement made to the contrary?

Dr. W. Not till after the sale.

Mr. B. Was that rent announced by the sheriff; did he announce that the property was subject to that rent, and had it been stated at that time to others, that it was not subject to that rent, would they have gone higher than they otherwise did?

Dr. W. I did not buy it in for myself, it depended entirely on the wishes of the person who bought.

Mr. B. Would it probably have made any difference amongst the bystanders?

Dr. W. It would probably have sold for more. I do not know but one purchaser, however, who would have been likely to give more. Mr. Pelly expressed some desire to become the purchaser.

Mr. B. You have made yourself familiar with the grants and covenances in the contract of the year 1841. What would you estimate that contract to be worth in connection with the operations of Ladd & Co. as extending those operations?

Dr. W. I suppose it would be worth whatever it sold for.

Mr. B. Could you fix any estimate upon it?

Dr. W. I should certainly consider it a very valuable property. The plantation in connection with the contract of 1841, if the Sandwich Islands Government were disposed to observe the contract, I should consider a very valuable property.

By the Board. We did not understand the arrangement between Mr. Burnham and Dr. Judd with regard to that place. You said that he was to pay the current expenses first, and then pay himself \$1,500, owing to him by Ladd & Co.?

Dr. W. Yes.

By the Board. Did Mr. Burnham assume that amount on purchasing the place, or was it dependant on the produce of the plantation?

Dr. W. Dependant on the produce for the \$1,500, and the expenses both.

By the Board. Paper money and all?

Dr. W. Yes.

By the Board. He ran no risk?

Dr. W. He did not, he was very careful to avoid that.

Mr. Brinsmade. Did it determine him in regard to what he gave at the auction sale, that he was to pay so much out of the produce?

Dr. Wood. I am not aware that it did. I do not know that he incurred any risk in stipulating to redeem the paper money.

Mr. B. He did not state that as a reason why he would give no more?

Dr. W. No, he did not.

The Court then adjourned till Friday, the 18th instant, at 7 o'clock P. M.

## TWENTY-SEVENTH DAY.

The Board resumed at the hour appointed.

*Dr. R. W. Wood cross-examined by Mr. Ricord.*

Mr. Ricord. You said, Doctor, in answer to Mr. Ten Eyck's first question about how Dr. Judd had expressed himself in regard to the Belgian Contract, that the general features of that contract were understood in the spring of 1844. Do you know if Dr. Judd had any means of information except what Ladd & Co. had?

Dr. Wood. I do not. I recollect his stating once that he was as fully informed, and more so than any body in the country; I do not know whether it was so really.

Mr. R. Do you know if he had any means of knowing?

Dr. W. No.

Mr. R. Did he speak to you of any letters?

Dr. W. I have heard him make allusions to Mr. Richards' letters. He never talked much to me about his correspondence.

Mr. R. In those frequent conversations, did you not express doubts of the solvency of Ladd & Co., yourself?

Dr. W. I did, a short time prior to the attachment.

Mr. R. What were your views then?

Dr. W. I had not entire confidence in the ultimate success of Mr. Brinsmade. Mr. Ladd had been a long time expecting to hear from him, and no news was received, and to my mind it was not certain that he would ultimately succeed, and in case of any disappointment, I supposed the house would find themselves embarrassed.

Mr. R. Was not one of those conversations in regard to your own funds?

Dr. W. That conversation in regard to my own funds was previous to August, 1844.

Mr. R. Did you, in that conversation say any thing about your doubting the solvency of the house?

Dr. W. Yes, I think I might have expressed doubt of the solvency of the house.

Mr. R. Did this conversation turn also upon the funds of W. C. Little?

Dr. W. In the spring of 1844, I was guardian of W. C. Little, and there were funds of his in my hands, about \$7,000, which, in addition to funds of my own, I had deposited with Ladd & Co., and I did not feel at ease about it. Whatever my confidence in the house might have been, I should not have felt satisfied to have so much in one house, and therefore, I insisted that as Mr. Hooper had assumed the guardianship of his person, I thought he might as well have that of his property also.

Mr. R. Did you not give an impression that you were apprehensive of their failure at that time?

Mr. Ten Eyck. I object to these questions to draw out those conversations.

Mr. Ricord. There has been testimony given in regard to the conversations, in which Dr. Wood has stated what those conversations were, and now I want further ideas about them. The topic being now the conversations of Dr. Judd, I think we ought to know what they were about. I want to know whether Dr. Judd did not receive some impression of the insolvency of Ladd & Co., and their liability to failure, from Dr. Wood and others who might have had conversations with Dr. Judd. But Dr. Wood, we know, did have conversations with him, and it is to be presumed that Dr. Judd's mind might have been acted upon by those conversations. Did not Dr. Judd in consequence of these conversations decline to take your funds, about the time or during those conversations, on the ground that they were in Ladd & Co.'s paper?

Dr. W. I don't recollect whether he stated any reason why he declined?

Mr. Ten Eyck. What funds do you allude to?

Dr. W. Those of W. C. Little. I recollect that I was desirous of investing those funds in such a way that they would be entirely safe, and I think I did propose to the Doctor to take them, and he declined the proposition. I do not recollect his reasons.

Mr. R. Was he not willing to borrow money at that time? did he not express himself willing to borrow money at that time?

Dr. W. I think at that time I understood that he did not wish to borrow, because I had some private funds which I offered, but he did not seem desirous to take them, but finally did as an obligation to me,—I so considered it, at a little less than the usual interest.

Mr. R. Where did these conversations occur that you speak of, Doctor?

Dr. W. I don't know what conversations you refer to.

Mr. R. Those of 1844; where did they generally occur?

Dr. W. I don't know whether I could recollect the places; sometimes in Dr. Judd's office; one conversation was on horseback, while we were riding out together. I met the Doctor so frequently at that time, it would be impossible to tell.

Mr. R. This one, in which you spoke of W. C. Little's funds. and the conversation in regard to them; where did that occur? about June, 1844, it must have been.

Dr. W. My impression is it must have been in Dr. Judd's office.

Mr. R. Was not I present on that occasion?

Dr. W. I do not recollect: I recollect you were present on several occasions when I was arranging that business of W. C. Little's in the Court of Probate.

Mr. R. I would like to know whether you held powers at any



time from Wm. Ladd or any of the house for the purpose of transacting business with Dr. Judd?

Dr. W. No.

Mr. R. Did not you have the conversations in that capacity?

Dr. W. Not at all.

Mr. R. Were they official conversations?

Dr. W. Not official, certainly not.

Mr. R. Did you go there at the instance and request of Dr. Judd?

Dr. W. I did not, sir.

Mr. R. In connexion with the same question, you repeated that the general features of the Belgian Contract were understood and that it was also understood that Mr. Brinsmade was negotiating, and that a sale had been effected by Mr. Brinsmade, and that you could not state whether the Belgian Contract was mentioned. Now where was Mr. Brinsmade negotiating for the sale of this property?

Dr. W. I understood it was in Belgium.

Mr. R. You said it was stated that a sale had been effected by Mr. Brinsmade, where was that sale said to have been effected?

Dr. W. In Brussels.

Mr. R. Do you recollect the date of that sale?

Dr. W. I do not. I have no knowledge of the date of that sale directly, I have it second hand.

Mr. R. Do you recollect the date of the conversation in which you mean to say the negotiation was spoken of, and the sale stated to have been effected?

Dr. W. As early as the spring or summer of 1844.

Mr. R. What did you understand Mr. Brinsmade was doing after the sale?

Dr. W. I understood that he had effected a sale earlier than this, as early as the spring of 1843—I do not recollect dates very distinctly—and I understood that after the sale was made he was acting with Mr. Richards in behalf of the Hawaiian Government, endeavoring to secure the independence of the Islands.

Mr. R. How did you understand that?

Dr. W. By letters from Mr. Brinsmade to the house, which I saw.

Mr. R. Who was he negotiating with, or who was the negotiation with?

Dr. W. The Belgian Company of Colonization.

Mr. R. Did you not understand from conversation with Dr. Judd that Mr. Brinsmade was negotiating with a gentleman in Ghent?

Dr. W. I do recollect a conversation in reference to Mr. Brinsmade having business in Ghent. A letter had been received from Mr. Richards or Mr. Brinsmade, in which it was stated that Mr. Brinsmade had been to Ghent on business connected with the Belgian Contract.

Mr. R. How did you understand that?

Dr. W. I understood that he was endeavoring to interest this gentleman in Ghent in the stock, but I do not recollect particulars. for I did not consider it a matter of moment.

Mr. R. When was this?

Dr. W. I do not recollect the date.

Mr. R. Do you recollect the year?

Dr. W. I do not.

Mr. R. Was it in 1844?

Dr. W. I do not know, but I think it was in the latter part of '43 or the spring of '44.

Mr. R. Do you recollect perhaps by my being here; was it after my arrival?

Dr. W. I could not state. I recollect that the intelligence of that visit of Mr. Brinsmade's did not make much impression upon me at the time, and I had not thought of it till you mentioned it.

Mr. R. Did not Dr. Judd say to you that he had seen a letter from Mr. Brinsmade to his partners, in which he stated about the Ghent affair?

Dr. W. I do not. I recollect that Dr. Judd was apprised of it in some way.

Mr. R. You are not sure whether he understood it by a letter to himself, or through Ladd & Co.?

Dr. W. No.

Mr. R. Do you recollect whether Dr. Judd said in that conversation that the negotiation in Ghent proved that that the sale was not made with the Belgian Company of Colonization?

Dr. W. The impression on his mind was that he had not fully closed with that company, or he would not have gone to Ghent. I recollect that was the Doctor's impression, and that I differed from him in opinion at the time.

Mr. R. Was it a natural impression, to be inferred upon the letter?

Dr. W. If it had been the natural impression, it would have struck my mind in the same way.

Mr. R. There was no explanation of what he was doing in Ghent?

Dr. W. I do not recollect particulars, but merely that he had visited Ghent, and that he had been endeavoring to interest a gentleman there in the Belgian Contract, but whether as a canvasser or purchaser of stock I do not recollect.

Mr. R. Did not Dr. Judd inform you that Mr. Brinsmade had written to his partners that he was afraid they would be obliged to fail or sacrifice the property?

Dr. W. No sir; if he did, it has escaped from my recollection altogether.

R. Did you never see any letters that communicated that the partners?

W. No. The only thing I ever saw, and which may be the one you refer to, was a complaint of Ladd & Co. to Mr. Brinsmade, in which they addressed him about his long delay in which he was sitting, and that if they did not hear soon from him they had it in contemplation to do something. I recollect his reply, expressing surprise that they should make any disposition of the property already sold in Brussels.

R. You said, Doctor, that Dr. Judd had received letters from Mr. Richards, although you did not hear him say so. Now was it from Mr. Ladd or Mr. Hooper that you understood this from, or not from public report?

W. I recollect hearing Dr. Judd complain of purchases made by Mr. Richards of merchandize to be shipped in the Belgian Commerce vessels, which he was sorry for.

R. You recollect that he had received information of the sale. You did get that from Doctor, not from Mr. Ladd?

W. Yes. I recollect that conversation with the Doctor.—Dr. Judd might or might not have alluded to the subject. I do not know, but I think he did.

R. You also testified that you could not say whether Dr. Judd knew the contract had been signed. You were simply under the impression that Dr. Judd knew it at the same time he had told you that he was as fully informed as Ladd & Co. themselves of Mr. Brinsmade's movements. Was it not Mr. Ladd or Mr. Hooper who told you the contract had been signed, or are you sure that it was Dr.

W. I did not intend to state the other evening that I heard Dr. Judd say so. There was a time when Dr. Judd thought it would succeed in operation, at subsequent times he expressed doubts.

R. You also said, Doctor, that Dr. Judd expected a ship to arrive on account of Government. Were those the articles of Mr. Richards left to be forwarded by Mr. Brinsmade?

W. I do not know.

R. I would ask you whether Dr. Judd was not very anxious that the plans of Mr. Brinsmade should succeed at that time?

W. I think he was.

R. How did he express his anxiety?

W. It is not correct perhaps to say that he was anxious to succeed, but my impression was that he regarded Mr. Brinsmade's plan rather favorably.

R. You stated that you had conversations with Dr. Judd at the time of the sale of Ladd & Co.'s property in 1844, and that he did not think it would go into effect. Are you not aware

that Dr. Judd was embarrassed for want of money in the Treasury Board in the fall of '44?

Mr. Ten Eyck. What has that to do with the point?

Mr. R. It has relevancy. I have only taken hasty notes with pencil, but you will find in Mr. Hopkins' notes, I apprehend, that it is relevant. This branch of the inquiry has to do with the sales of property. Those sales Dr. Wood testified to as sales made under execution in favor of the Treasury Board.

Mr. T. E. I object to the question. I do not see that it can have any relevancy to the case. It cannot make any difference whether the Doctor was embarrassed or not.

Mr. R. You stated that Dr. Judd said that the Belgian Company would send out an agent. Is it not probable he said they might send an agent?

Dr. W. I so stated it.

Mr. R. Or that it was his opinion, perhaps; did he state it as his opinion?

Dr. W. He stated it as a probability or possibility.

Mr. R. Did you not gather from your conversations with Dr. Judd that he thought the property of Ladd & Co. was valued altogether too high at that time?

Dr. W. I do not recollect now any conversation in regard to Ladd & Co.'s property.

Mr. R. On the direct you stated that if the agents came here they would find the property deteriorated in value.

Mr. Ten Eyck. Dr. Wood did not say he thought so, but that Dr. Judd said so. I have not objected to the question, but Mr. Ricord is putting words into the witness' mouth as having been said by him that he did not say.

Mr. R. What do you think yourself, was the valuation of it too high?

Dr. W. The property of Ladd & Co., taken in connexion with the Contract, which was a very large one, I considered was sold at a fair valuation,—I mean in connexion with the Contract of '41.

Mr. R. You stated also that sometime after the sale of the store and goods in Honolulu, and before the sale of Koloa estate, Dr. Judd stated that the Belgian Company would not go into effect, and that in consequence Ladd & Co. would not be able to pay their debts.—Did Dr. Judd ever say that he was hostile to the Belgian Contract? Did he ever say so?

Dr. W. No.

Mr. R. Did he ever say to you that he was hostile to Ladd & Co.—that he was inimical to Ladd & Co.?

Dr. W. No. My impression is that he was friendly to them, up to the fall of '44. Since then the relations between them have been well understood. They have been at variance.

Mr. R. Did Dr. Judd ever say that he was hostile to Mr. Brinsmade?

Dr. W. No.

Mr. R. What did he say that gave you the impression that Government had changed their views, and were hostile to this Contract?

Dr. W. I derived that impression from my observations of the course of Dr. Judd's policy.

Mr. R. In what particular instance?

Dr. W. It is not in my power to recall the facts and circumstances connected with events passed so long ago as those on which my opinion is based.

Mr. R. There must have been some palpable point on which you fixed to make up an opinion of that kind.

Dr. W. Doctor stated to me as early as the fall of 1844, that he had made up his mind that the Belgian Contract would fail. This was at the time he determined to have an attachment on Ladd & Co.'s property.

By the Board. Had Dr. Judd seen the Contract then?

Dr. W. I do not know whether he had seen the Contract, but I said before that the general features of the joint stock company were understood. All I know is that subsequent to that he has acted with an entire disregard—

Mr. R. I want some instance wherein you think he did act so.—Some particular thing that he did?

Dr. W. The sale of the property I considered as a breach of the Contract. I had frequent conversations with him, and though he did not state so, my inference was that the motive was to defeat the Contract. Perhaps it might have been a mere opinion of mine.

Mr. R. It was a bare suspicion I suppose?

Dr. W. A very strong impression. I think I addressed Mr. Brinsmade on the subject as early as the spring of '45. I think I stated it as my belief that the Government meant to defeat the Contract.

Mr. R. In the spring of '45?

Dr. W. Yes.

Mr. R. Speaking of the first sale of the mortgaged property at Koloa, did Dr. Judd or any one else ever throw the least obstacle in the way of your bidding, or any one else's bidding at that sale of the property of Ladd & Co.?

Dr. W. I stated at the time that no one would be allowed to purchase contrary to the views of Dr. Judd, excepting on terms so onerous—

Mr. R. Did you understand that from Dr. Judd?

Dr. W. I derived that impression from the management of the sale.

Mr. R. Did you hear Dr. Judd say so, or did he throw any obstacle in the way?

Dr. W. I know of no obstacle.

Mr. R. Do you know what are the impressions of the public?

Dr. W. I do not know what the impressions in Honolulu are—My impressions are derived from my observations at the time. I had frequent conversations with Dr. Judd. The fact as near as I can collect is this, that I stated, and I think Dr. Judd did also, that if the property should fall into the hands of a person having no interest beyond the present crop, it would be ruinous to the property, and it was my wish that it should not be sold. When I stated that it was Dr. Judd's determination to sell it, and as I was interested in the plantation somewhat, preferred it should remain in Mr. Burnham's hands, that is to say in the hands of some one who would conduct it properly through the year, and solely with a view to present profit.

Mr. R. Was one of those conversations you spoke of on the occasion when you and Dr. Judd and Mr. Hooper had a conversation in the Honolulu House?

Dr. W. Yes.

Mr. R. Mr. Burnham was present?

Dr. W. I do not recollect, but then there was no reference to it. The object was as I understood to ascertain whether the property was exposed to attachment from other creditors. Mr. Ladd was satisfied that it was not, but Dr. Judd took a different opinion.

Mr. R. How was it in regard to Burnham, how did he stand affected?

Dr. W. He might have been present: I do not recollect. I do not know what interest he had.

Mr. R. Did he hold a mortgage on the crops, or on the sugar to be made out of the crops?

Dr. W. He had a mortgage on the crops.

Mr. R. Do you know whether the object was to ascertain whether Mr. Burnham was secured, or whether in case the lease were sold to some one else, his security on the produce of the cane would go for nothing?

Dr. W. I think that you or Dr. Judd thought that his mortgage on the standing crop was not secure.

Mr. R. He had a mortgage on the sugar and molasses. Was there no probability that some one might levy on the crop, and so render his mortgage useless?

Dr. W. I believe you expressed that opinion that the mortgage was not good, but I do not recollect all the business.

Mr. R. Was not that the motive for giving the preference to Mr. Burnham at that meeting. When all those persons were present—

Dr. W. I could not state the reason assigned.

Mr. R. Was not that the reason?

Dr. W. I am not aware that it was; it might have been.

Mr. R. Do you recollect whether Burnham's affairs were discussed at considerable length?

Dr. W. Yes.

Mr. R. They were?

Dr. W. I think that Dr. Judd gave preference to Mr. Burnham for several reasons. He was very friendly to Mr. Burnham, and was willing to aid Mr. Burnham in securing his debt; besides he had confidence in him as a superintendant.

Mr. R. Was this mortgage of his on the sugar and molasses for back services?

Dr. W. I suppose it must have been so.

Mr. T. E. I object.

Mr. R. The motive is a good one.

Mr. T. E. You are questioning about a mortgage, and the very compact under which we act declares that mortgages are excepted.

Mr. R. But things have taken a different turn, as appears from the evidence given on the direct. Let me read what the direct examination has elicited. (See direct examination of the witness.)

Mr. T. E. Let me say one word. The conversation to which I alluded was between Dr. Judd, Dr. Wood and Mr. Burnham. I never alluded to any conversation in Mr. Ricord's office. I only alluded to that one conversation.

By the Board. The nature of Mr. Burnham's security has never been touched on.

Mr. R. But Mr. Ten Eyck went on afterwards to show how it was to be paid.

Mr. T. E. Well, Mr. Ricord, ask Dr. Wood whether the conversation you allude to is the same one that I alluded to; if so, I will give up.

Dr. W. I do not recollect that in the conversation when the mortgages were reviewed anything was said about Mr. Burnham's papers.

Mr. R. But was this one of the conversations you alluded to the other night?

Mr. T. E. I recollect very well I called his attention to one conversation when Dr. Judd, Dr. Wood and Mr. Burnham were present, and that was the only one to which I did allude in regard to the sale.

Mr. R. As the conversations were loosely adverted to, I do not know which of them it might have been. It is impossible for me to tell.

Mr. T. E. I called his attention to one particular conversation, in regard to the sale and the vessel going down.

Mr. R. I will read what you said. (See the direct examination of the witness.)

Mr. T. E. Will you ask Dr. Wood if any of that conversation took place when you were present. As I understood him there were only three persons present.

Mr. R. What was the object of the examination of those mortgages, was it with a view to affecting this Contract?

By the Board. Will you ask whether you were present at the conversation Dr. Wood alluded to?

Dr. W. I remember Mr. Ricord was present when the mortgages were reviewed; I do not recollect his being present when the other conversation was had.

Mr. T. E. The conversation about the arrangement for the purchase by Mr. Burnham?

Dr. W. Mr. Ricord was not a party to that conversation.

Mr. R. Did Dr. Judd repeatedly urge you to become a competitor at that sale?

Dr. W. He did not urge me. He once made a proposition to me to agree to take it before he had made any arrangement with Mr. Burnham.

Mr. R. Did not he say to you that Government did not want the property itself?

Dr. W. I have heard him say so subsequently. I do not recollect whether he stated so at the time, but my impression is that the Doctor did not wish to carry it.

Mr. R. Did he not regret in your hearing that Mr. Boyd bid of the plantation at \$3600 to the Government?

Dr. W. No, I do not recollect. I recollect the Doctor expressed his disappointment that he had paid too much for it, and expressed it as a matter of doubt whether he would realize his money again. This was sometime afterwards; that was the second sale, however.

Mr. R. Did you not at one time state that you would bid at the first sale at Koloa?

Dr. W. That I would bid?

Mr. R. Yes, that you would bid.

Dr. W. I might have so stated, but I do not recollect. It is very probable that I may. I think I did intimate that I would, and Dr. Judd replied, if you buy it you will have to give more than one hundred dollars.

Mr. R. You stated that there was an understanding that the Government was not to compete in bidding for the estate?

Dr. W. Yes, at the first sale.

Mr. R. Do you mean by that that Government was not to bid until Mr. Burnham had run it up to one hundred dollars? Do you mean that Government was to refrain from bidding at all, or to refrain from bidding until Mr. Burnham had lost his chance at one hundred dollars?

Dr. W. After he had lost his chance.

Mr. R. You say after that he was to bid on Government account. Was he limited?

Dr. W. I supposed he was limited.

Mr. R. Did you know at the time what the limit was?

Dr. W. I did not. I have heard since what it was.



Mr. R. What was it?

Dr. W. Five thousand dollars.

Mr. R. Supposing there had happened to be any one in the way who would have been willing to run up the price to higher than one hundred dollars,—was there anything to prevent it. Was anybody barred, in other words, from running it up?

Dr. W. No, I do not know what obstacles there were in the way.

Mr. R. Do you know of any obstacles?

Dr. W. I do not. I do not think the public in Honolulu knew of the amount of property to be sold.

Mr. R. Do you think that Messrs. James Robinson & Co., or Mr. Pelly, or any other man, would have given any thing for that property?

Dr. W. I think they would, if they had been a little acquainted with the value of it. Mr. Pelly has since alluded to the sale.

Mr. R. I would observe, that the papers which have been given into the court contained one amongst their number, which I would like Dr. Wood to see. It is the advertisement which was posted.

By the Board. The question was asked the other evening whether the property was advertised.

Mr. R. One of the sales was advertised in the Polynesian and the other was posted all over the town. I would like to have the Doctor, if it could be readily got at, see that advertisement.

By the Board. We cannot get it now.

Mr. R. Some other time then?

By the Board. We have not any recollection of ever seeing any advertisement amongst the papers. Our attention was called to the circumstance and we examined the series, but we did not see the first advertisement.

Mr. R. You said, Dr. Wood, that Dr. Judd stated there was no probability there would be any other bidder than Mr. Burnham; did not you state the same thing?

Dr. W. I might. I was adverse to having the property sold at all, but as I could not prevent it and the property was to be sold at auction, I preferred having this arrangement, by which the property should fall into Mr. Burnham's hands, even at a less price, then it would have done at a *bona fide* sale for reasons which I gave before.

Mr. R. What were those reasons?

Dr. W. That any person not having any interest beyond the crops becoming the purchaser, would probably be deteriorated under his hands.

Mr. R. Was not the vessel, Dr. Wood, that went to Koloa, under the direction and control of Mr. Burnham. Was not he the charterer?

Dr. W. I am not able to state. She went down on his account, but whether he chartered her I cannot state.

Mr. R. Whose vessel was she?

Dr. W. I understood a Government vessel.

Mr. R. If there was a charter, you think there would be some record of it?

Dr. W. I should presume so.

Mr. R. I suppose when you said the property was not advertised, you meant that it was not advertised in the *Polynesian*?

Dr. W. The question was so put. The question was did the advertisement appear in either of the papers, and I said no.

Mr. R. Did not Mr. Ladd and Mr. Hooper complain of the advertisement of their store goods in the *Polynesian*?

Dr. W. I do not recollect, now, hearing them complain; I recollect they regretted the advertisement on account of the effect it was likely to have on their schemes abroad.

Mr. R. Do you think that might have been an inducement to not putting the first sale in the public papers?

Dr. W. I cannot say that it was not in the first sale. I think it might have been at that time. I think that if Ladd & Co. had requested that it should not be advertised in the papers that Dr. Judd would have gratified them. I do not know, however, that they made any application.

Mr. R. Do you not know, Doctor, that the property was advertised thirty days previous to the sale, I mean the first sale?

Dr. W. I cannot say. My impression was it was advertised for a few days. I recollect seeing previous or subsequent to the sale, a hand-bill. I recollect seeing one on the gates, it must have been in some of the streets.

Mr. R. Before the vessel went down?

Dr. W. I do not recollect it might have been before or afterwards.

Mr. R. I would very much wish to have the Doctor, at some time or other, identify the placard, or see the placard which has been filed with the arbitrators, or say whether it is one of the kind which he recollects having seen at that time. You said the vessel was not advertised; is it the custom to advertise vessels going to *Kauai*?

Dr. W. It is not.

Mr. R. Have you ever known an instance of its either being placarded or put in the papers?

Dr. W. No, and that was the first instance in which property was advertised to be sold on another Island.

Mr. R. Would it be most natural for Mr. Burnham, the charterer, or for the owners to advertise. Taking Mr. Burnham to be the charterer, would it be most natural for him or for the owners to advertise?

Dr. W. Ordinarily, the charterers of vessels seeking for freight are in the habit of advertising. In this instance, I suppose —

Mr. R. Would it have been regular for those who had no interest in the vessel to advertise?

Dr. W. I suppose not. If it had been any body's duty, I suppose it would have been the sheriff's.

Mr. R. Had the sheriff any control over the vessel?

Dr. W. I suppose not.

Mr. R. You said you believed it to be Dr. Judd's object to keep control of the property. Is this any thing more than a supposition of yours or surmise about it?

Dr. W. I was strongly of that impression.

Mr. R. Did you get it from him from any thing he said to you?

Dr. W. I understood perfectly that he intended so to control the sale as to have it come into Government's hands or Mr. Burnham's, or if I had chosen to become purchaser, it would have been on certain conditions, like those agreed on between Dr. Judd and Mr. Burnham.

Mr. R. You said you did not wish to purchase contrary to the views of Government. What am I to understand by that?

Dr. W. I did not think it worth while to purchase in opposition to the views of Dr. Judd, I could not compete with him.

Mr. R. Why, should you not have had money enough?

Dr. W. I supposed that the Doctor was determined to purchase the plantation, or that myself or Mr. Burnham should purchase it, and that he would not oppose us upon certain conditions.

Mr. R. You mean that Dr. Judd could have made a dear purchase of it for you?

Dr. W. Yes, for me.

Mr. R. That was for the benefit of Ladd & Co. Did Dr. Judd ever say any thing more to justify this opinion, than that unless the purchaser would be likely to redeem the paper money, the plantation would be ruined?

Dr. W. I do not recollect his stating that. I recollect stating myself that it would be necessary for the purchaser to redeem the paper money in order to carry it on.

Mr. R. You said the other night that Government was bound to redeem the paper money. Did you ever have any evidence that the Government was bound?

Dr. W. I did not mean to state that in positive terms. I did not mean to state that the Government were committed to the natives.

Mr. R. Was Dr. Judd anxious to have it redeemed?

Dr. W. I supposed that he was committed to the natives, I supposed that was the reason. I supposed, also, that whether committed or not, he had a friendly regard to the natives, and in justice to them, wanted to secure them against loss.

Mr. R. You said that you did not think it worth while to com-

pete with Government. Was it Dr. Judd's wish that you should compete with Government?

Dr. W. He did not express any such wish.

Mr. R. Did he say any thing to justify such an opinion as you expressed the other night?

Dr. W. There was no intimation that if I purchased independently, I should have to pay for it. I supposed, that Doctor to have his own way, could afford to pay a little more than the value.

Mr. R. And to look after the paper money?

Dr. W. I do not know about that.

Mr. R. You said, Doctor that Dr. Judd refused to give any information respecting the sale of 1845? Was it your impression that he wished you to become a purchaser or not?

Dr. W. I supposed from his withholding information, that he intended to purchase on account of Government.

Mr. R. You supposed that?

Dr. W. Yes.

Mr. R. Did you authorize an agent to bid?

Dr. W. I did.

Mr. R. How high?

Dr. W. I left it to his discretion. I authorized him to bid a certain sum, and if he chose to go higher he might.

Mr. R. What sum?

Dr. W. \$2,000.

Mr. R. How high did he bid?

Dr. W. \$3,500, for the lease for one year. The property was sold subject to the mortgages, but it was stated that the purchaser would only have it for one year, as the mortgages became due then, or before then.

Mr. Ten Eyck. Was it so advertised?

Mr. Ricord. It was so stated at the sale; the sheriff stated that the purchaser must be on his guard?

Mr. Ten Eyck. Exactly, subject to incumbrances.

Mr. Ricord. In your evidence, the other night, you spoke of certain arrangements between Dr. Judd and Mr. Burnham; had Mr. Burnham a mortgage on the sugar and molasses that year?

Dr. Wood. He had.

Mr. R. Did not that circumstance deter you from becoming a competitor at the sale?

Dr. W. No, I believe not. I supposed that if the property was sold irrespective of the mortgage, that it would not be in the way of the purchaser. I supposed that the purchaser would be safe, and that he would not be exposed to Mr. Burnham's mortgage.

Mr. R. Why not? That would depend on Mr. Burnham.

Dr. W. That did not operate on my mind at all.

Mr. R. You said that Mr. Burnham paid but little attention to the case; did he not make a trial of guano?

Dr. W. I do not know about that. I understood there was a quantity of guano sent down; what he did with it I have not been informed.

Mr. R. Is the land exhausted?

Dr. W. A large portion of the land there is partially exhausted. One field of cane was neglected entirely, and lost for want of attention.

Mr. R. You say your least estimate of the profits off the plantation is \$8,000 per annum; will not the product the last year amount to more than that?

Dr. W. The entire product?

Mr. R. The nett profit.

Dr. W. I should think not. I should not think it would amount to that, and next year it will be still less. There has been none planted for two or three years, and in order to keep the plantation in a healthy state, and make it productive, it is necessary to lay down cane every year.

Mr. R. What has been the profit last year?

Dr. W. I cannot state now, because I have not made up the accounts.

Mr. R. What do you suppose it to be?

Dr. W. I suppose it to be about \$6,000. It may not amount to so much, and may exceed that sum, I could not tell.

Mr. R. Do you know whether either Mr. Ladd or Mr. Hooper assisted Mr. De Fiennes in making out that report?

Dr. W. I believe not; I believe it was complete when he returned from Kauai, and he took no suggestions from them; not to my knowledge.

Mr. R. Were the opinions in the report generally Mr. De Fiennes' own opinions?

Dr. W. He derived them from Mr. Burnham principally, as I understood, or rather the facts upon which his opinions were based, were given him by Mr. Burnham.

Mr. R. If you thought those opinions just, why did you not enter into the proposition of Dr. Judd?

Dr. W. To have taken the plantation for one year first, and afterwards pay \$5,000 in advance, calculating the interest on it at 12 per cent., would make the rent more than \$5,000. Besides, I never had any very strong desire to lay out money on that estate; I have other engagements and occupations, and have never been desirous of the trouble and responsibility of conducting it. At the time Mr. De Fiennes made that report, my first impression was that it was a high estimate, but the nett proceeds of the past and present year confirm in my opinion the general correctness of the report. The estate will

not pay so much next year as it has this; the property has been deteriorating.

Mr. R. How came the condition to guarantee you against the claims of the Belgian Company to be introduced?

Dr. W. When I made a proposition to Dr. Judd to lease it for 10 years, I made that condition that they should guarantee me secure possession.

Mr. R. Did Dr. Judd seem to hesitate about that guarantee?

Dr. W. He might have manifested some hesitation.

Mr. R. Did he?

Dr. W. I do not recollect; I wont say. When I stated to him that I thought \$5,000 was a large rent, he reminded me of the condition to guarantee.

Mr. R. Did not he give you to understand that Mr. Brinsmade's plans in Belgium had exploded at that time, in connection with this guarantee?

Dr. W. He might have expressed such an opinion; I think he did about that time, in the summer of '45.

Mr. R. Did not he read you a letter from Sir George Simpson, H. B. M.'s Commissioner in London, to prove it?

Dr. W. He might have read it, I do not recollect it.

Mr. R. In proof of the fact that it had exploded?

Dr. W. Doctor might have read it to me; I will not state that he did not.

Mr. R. Have you heard it?

Dr. W. I have not heard it read, but I have heard some account of it.

Mr. R. By whom?

Dr. W. By Mr. Brinsmade, I think; that is to say, some parts of it.

Mr. R. How did Mr. Brinsmade obtain the knowledge of it?

Dr. W. I understood Mr. Brinsmade, there had been an examination of papers in the foreign office, and when he came home he told me about it.

Mr. R. That is very recently?

Dr. W. Yes, within a day or two.

Mr. R. I am now coming upon the examination by Mr. Brinsmade. You said you had had several conversations with Mr. Richards after his return, who said that if any confidence could be placed in the promises of the best men in Europe, Mr. Brinsmade would succeed; however, he had learned from experience, that the promises in Belgium were like promises in the Sandwich Islands, and you explain that to mean that folks do not always fulfil their promises in the Sandwich Islands. You said that Mr. Richards said that if any confidence could be placed in the best men in Europe, Mr. Brinsmade would succeed. In what part of Europe was Mr. Brinsmade negotiating at that time?

Dr. W. This conversation occurred very soon after Mr. Richards' arrival in the Sandwich Islands, and he had left, as my impression goes, Mr. Brinsmade in Brussels.

Mr. R. Did you understand the success of which he spoke, to mean success in Brussels?

Dr. W. Yes.

Mr. R. Have you not received the impression that he was in England at that time, endeavoring to enter into a contract with the Quakers?

Dr. W. Not at that time but subsequently.

Mr. R. When?

Dr. W. I do not recollect the date, I recollect to have heard of Mr. Brinsmade being in England some months subsequent to Mr. Richards' departure from Brussels.

Mr. R. Negotiating with the Quakers?

Dr. W. I understood he was endeavoring to get the stock, or part of it, taken up by an Englishman.

Mr. R. Have you not gathered this from conversations with Dr. Judd?

Dr. W. No, I think not. It is possible, but my impression is that I derived my information from Mr. Ladd.

Mr. R. Did not Dr. Judd tell you, in 1845, that Mr. Brinsmade was negotiating with Mr. Gurney the rich Quaker?

Dr. W. I recollect being informed of Mr. Brinsmade being in communication with Mr. Gurney, but I do not recollect whether I derived it from Dr. Judd; it is very possible that I did, but I do not recollect now.

Mr. R. Well, I want to know then, Doctor, whether Dr. Judd in any of the conversations you had with him, said that Mr. Brinsmade's negotiations in England proved that the Belgian Contract had blown up?

Dr. W. No, I do not recollect that. I recollect he spoke of his visit to Ghent as evidence to his mind, that he had not met with success in Brussels.

Mr. R. You do not recollect the other?

Dr. W. No.

Mr. R. You said that you understood judgment in favor of the treasury board, included items that were not due, with a view to make it as large as possible. Is it not possible you got this from Mr. Ladd?

Dr. W. No, I recollect being in Dr. Judd's office at the time that Mr. Ladd was making up the account or settling his account with Dr. Judd, and doubtful items were introduced.

Mr. R. What were they?

Dr. W. Some monies which Mr. Richards had advanced Mr. Brinsmade in Europe.

Mr. R. They were included?

Dr. W. They were included in the account. I think this was sometime previous to the confession of judgment. I do not think I was present at the time of the confession of judgment.

Mr. R. Suppose Dr. Judd were to deny that he ever gave you any information of the kind, and under oath, to say it was not so, would you still think you got it from him? Would you, if he were put on the stand and swear to the contrary?

Dr. W. I did not mean to state that he did give me such information; I did not mean to state so. At the time that the account was made out I remember the doubtful claims being referred to. Doctor wished them to be included, and Mr. Ladd asserted, though it was understood at the time that it was a matter of doubt whether the money said to have been borrowed, had been paid, there was no evidence that it had. My impression is that the Doctor persuaded Mr. Ladd to introduce them.

Mr. R. But you say it was not known whether they had been paid or not in England?

Dr. W. That was my impression at the time.

Mr. R. Then they were included for greater certainty?

Dr. W. I do not know what the motive was.

Mr. R. Was it certain that they had been paid?

Dr. W. No, it was not certain.

Mr. R. Was it most probable they had been?

Dr. W. No, the probability was they had not been.

Mr. R. I was under the impression that you answered before, that you did not get it from Mr. Ladd.

Mr. Ten Eyck. He said that he did not say he got it from Dr. Judd, not Mr. Ladd.

Dr. W. My impression is that I was present when Dr. Judd and Mr. Ladd were making up accounts. I think it might have been some weeks or months previous to the confession of judgment, I would not state positively, but such is my impression.

Mr. R. Dr. Wood, how much do Ladd & Co. owe you?

Mr. T. E. What is the object?

Mr. R. Here is an interested witness. I could have examined him on his *voir dire*, but I did not think fit to do so, but you have decided that during the cross-examination the witness' interest may be proved. I only want to spread the facts on the record, that there may be no mistake. He now stands there as a witness who has an interest in the case. I merely want him to state what his interest is, as I did not deem it necessary to examine him on his *voir dire*.

By the Board. You ought to have done so if you wanted it to appear. You cannot prove it by himself.

Mr. R. Not by himself? Do you recollect stating in Mr. De



Fiennes' case that I might prove his interest by himself on his cross-examination even after he had been examined on his *voir dire*.

By the Board. If you had objected to Dr. Wood,—

Mr. R. I waived the *voir dire* examination.

By the Board. Do you mean to say that is law?

Mr. R. I do, but if you want authorities for it I will show them to you. I do not want to bring forward my authorities unless you desire it, but I am confident of the correctness of my position.

Mr. T. E. I will just observe that Mr. Ricord has no right to prove by Dr. Wood anything touching his interest.

Mr. R. If you will allow me I will show you that it is the very object of cross-examination.

By the Board. Have you law books here?

Mr. R. I have come unarmed. I came without my books in order that I might not be tempted to use my weapons.

By the Board. We should like to have some law on the subject, but we do not want a long argument.

Mr. T. E. I have something here in Greenleaf on Evidence, which is to the point.

By the Board. Will you read it.

Mr. Ten Eyck read:

"In regard to the time of taking the objection to the competency of a witness on the ground of interest, it is obvious, that from the preliminary nature of the objection, it ought in general to be taken before the witness is examined in chief. If the party is aware of the existence of the interest, he will not be permitted to examine the witness, and afterwards object to his competency, if he should dislike his testimony. He has his election, to admit an interested person to testify; but in this, as in all other cases, the election must be made, as soon as the opportunity to make it is presented; and failing to make it at that time, he is presumed to waive it forever." Greenleaf on Evidence, page 491, sec. 421; and *vide* 8 Pick. Mass. Reps. 390.

Mr. R. I do not object to his competency; I merely want to show what weight ought to attach to his evidence.

Mr. T. E. But take a common sense view of it. If the party has got all out of him that he wants, is he to object to the witness, and wipe out his evidence?

Mr. R. I have not introduced Dr. Wood, at the same time I have not objected to him on the score of interest, nor do I mean to. I have not objected to the competency of Dr. Wood; if I had done so I should have examined him on his *voir dire*. But having waived that objection as to the competency of the witness, I have still an objection to his interest; that is to say, I want to qualify his evidence on account of his interest. That is what I want to come to.

By the Board. If you can prove it by independent evidence, you can do so.

Mr. R. That is putting me to the impeachment rule. My object is not to impeach Dr. Wood: if I came with other evidence it would be impeaching him; it would be expressing my doubts of his being a truthful man. I take his evidence as being sincere, and all that, but I want to show whether there are any motives for bias in the mind of the witness; whether there is any money depending, or whether he is a relation, and so on. I like Dr. Wood's testimony in the main,—I think it is what the natives call *pololei*.

By the Board. Then we think we would not alter it all.

Mr. R. But I would like to have you to know that the witness has a mortgage of \$24,000. I want that from his own mouth, and also I want to know from him whether he has not a feeling of consanguinity. May I, or may I not?

By the Board. You may not, Mr. Ricord.

Mr. R. Then it would abridge the examination, at all events.

*Direct examination Resumed.*

Mr. Brinsmade. In regard to the conversation, Dr. Wood, which you speak of having had with Dr. Judd in reference to my negotiations in Ghent, are you sure that it was in the spring of either '43, '44, or '45, that that conversation took place?

Dr. W. It made very little impression upon me at the time, and I cannot state exactly when it was.

Mr. B. Did you understand that I was negotiating for a sale *de novo*, or for carrying out the Contract of '43, made in Belgium,—what was your understanding in those conversations?

Dr. W. My impression is that your object in going there was for the purpose of carrying out the Belgian Contract.

Mr. B. Did Mr. Richards mention to you that he had been there himself for that purpose?

Dr. W. I do not recollect.

Mr. B. Did you hear him speak of any merchants in Ghent, as being amongst the most respectable in Belgium?

Dr. W. I do not recollect having heard Mr. Richards allude to his visit to Ghent. I think very soon after Mr. Richards returned, he did speak of Mr. Brinsmade's visit to Ghent, but I do not recollect the particulars.

Mr. Ricord. You recollect his alluding to it?

Dr. W. I cannot recollect very particularly. I have that impression.

Mr. Brinsmade. Did you understand Dr. Judd as expressing his dissatisfaction with Mr. Richards' purchases, as being for purchases actually made, or for purchases to be made?

Dr. W. I understood at the time,—at least my impression was—that he had purchased the articles.

Mr. B. By what means did he expect to receive those purchases here?

Dr. W. By a vessel which it was supposed would sail for this place.

Mr. B. Did you understand that vessel to belong to the Belgian Company?

Dr. W. Yes.

Mr. B. Did he ever state from what port he expected that vessel would sail?

Dr. W. I do not recollect now.

Mr. B. You stated that you expressed to Dr. Judd your wish that the property at Koloa might not be sold; did you ever intimate to him that he might probably regret any such movement?

Dr. W. Not at the time of the sale of the Koloa estate. I did at the time of the sale of the store in Honolulu.

Mr. B. What did he reply to any of those expressions of yours with regard to the probability of his afterwards regretting the step?

Dr. W. I had frequent conversations with him on the subject; the last was on the day of the sale. I hinted my apprehensions that he would have reason to regret it. He received the intimation as being a friendly one and my honest opinion, but he differed with me in opinion.

Mr. B. In your conversations with him and Mr. Burnham in reference to the arrangement for the purchase by auction at Koloa, did Dr. Judd then or at any time propose to arrange with you for that purchase at auction on the same terms as he did with Mr. Burnham?

Dr. W. He said nothing about the terms when he proposed to me to become a purchaser.

Mr. B. Did he propose to have any power or control over the sale? did he intimate to you in that proposed arrangement that he had any power or control over that sale, or did you understand that he meant to have?

Dr. W. I understood that he exercised some power and control.

Mr. B. Under your desire that the property should not pass into the hands of persons who would ruin it, did you know that the course pursued by Dr. Judd and Mr. Burnham in reference to the sale was calculated and intended to prevent the sale being made to any other persons,—that it was to be a close controlled sale?

Dr. W. I so understood it.

Mr. B. Did you think that in the very nature of the case, it must be so; was that your impression from the circumstances of the case? What was your impression?

Dr. W. I did so understand it. There were but two or three people that I knew of that took any interest about the sale, viz: myself, Mr. Burnham, Dr. Judd and Ladd & Co.

Mr. B. What were the circumstances which induced you to think that it was intended to be a sale controlled by Government or Dr. Judd, and that there should be no competition?

Dr. W. My impression is that there were no special pains taken, or rather that there was a lack of pains on the part of the sheriff to give publicity to the sale. The sale was also precipitated, and Mr. Burnham was hurried off with all practicable secrecy.

Mr. B. Had he made all his arrangements for carrying on the plantation before he left, as if he were already the purchaser?

Dr. W. He had. He purchased some materials which he would need, and also obtained from me one hundred dollars to pay with in case he became the purchaser.

Mr. B. Do you know whether there was anything between them? did you see anything that bound the parties in this arrangement?

Dr. W. I saw the contract, or heard it read.

Mr. B. Was it signed by the parties?

Dr. W. I understood it to have been signed.

Mr. B. How soon after the compilation of this engagement was it that Mr. Burnham left for Koloa?

Dr. W. I think the next day; I think this arrangement was made one evening, and he sailed next day.

Mr. B. Where was the vessel then?

Dr. W. The vessel was at the wharf.

Mr. B. When the arrangement was concluded?

Dr. W. Yes. I am not sure whether the arrangement was concluded the same day or the day before he sailed.

Mr. B. You say you have seen one of the hand-bills advertising the sale; do you recollect the date of the hand-bill?

Dr. W. I do not.

Mr. B. You stated you had never known an instance of the advertisement of the sailing of a vessel or of the sale of property to take place on another Island; do you recollect anything about the sale of the Jefferson?

Dr. W. I do recollect such a sale.

Mr. B. Do you recollect anything about the facilities afforded purchasers at that sale?

Dr. W. I do not recollect the particulars in reference to that sale.

Mr. B. Do you recollect any facilities afforded here, or any advertisements published in any form?

Dr. W. I do not; it is a long time ago.

Mr. B. Do you know whether any purchasers did go down from here or Hawaii or any other place?

Dr. W. My impression is that several went down.

Mr. B. Do you know anything about it?

Dr. W. It was four or five years ago, and I have not thought of it since, and all the particulars have escaped my recollection, except that I visited with Mr. Ladd the place where the vessel was wrecked.

Mr. B. Were you at the sale?

Dr. W. I was not; the sale was some time afterwards, and I had returned here. My impression is now that several persons went down and that some purchases were made.

Mr. B. You stated that you did not wish to become a purchaser in opposition to the views of Government. Did any opposition operate on your mind, and that of purchasers?

Dr. W. I had no apprehensions of involving myself in a quarrel with Government by becoming purchaser, but I thought that Dr. Judd had other views than I had of the profits to be derived from the plantation, and perhaps would be disposed to pay more than I should.

Mr. B. Dr. Wood, as being interested in the plantation at Koloa, do you not know that the Sandwich Islands Government were responsible for the redemption of the paper money?

Dr. W. I understood that an arrangement was made with Dr. Judd and Ladd & Co., to take the paper money in payment of taxes. I understood at the time but I do not know it positively, for my information was derived from other parties that the Government was responsible for its redemption.

Mr. B. Did you understand in the arrangement made between Dr. Judd and Mr. Burnham for the purchase, on the part of Mr. Burnham that it was in order to relieve the Government of that responsibility, that they agreed not to compete with Mr. Burnham in his offers?

Dr. W. It was not. I did not understand at that interview that that responsibility was taken into consideration at all.

Mr. B. Did you suppose it was to relieve Government of their obligations?

Dr. W. I supposed that was one object.

Mr. B. Was it for the payment of other obligations than that under the judgment which was executed upon that property?

Dr. W. It was; there was a debt of \$1,500 to Burnham and the redemption of the paper money.

Mr. B. The debt of Mr. Burnham was to be secured on one side, and the Government to be released of its obligation on the other, as I understand. What did Dr. Judd say at the time when he declined giving information upon the state of the property at the last sale, —what reason, or did he urge any?

Dr. W. He stated that confidential conversations had with him had been repeated, and he did not wish to commit himself.

Mr. B. Were you asking for confidential information?

Dr. W. I was not, and I so stated at the time, that I did not come there for confidential information. He did not seem in a mood to give me the information I wanted.

Mr. B. He declined it on the ground that confidential conversations had been made use of?

Dr. W. Yes, he assigned that as a reason.

Mr. B. When this arrangement was made with Mr. Burnham, did you not understand clearly that he abandoned his mortgage?

Dr. W. He did.

Mr. B. Did Mr. Burnham fulfil the conditions of this contract with Dr. Judd?

Dr. W. He did not.

Mr. B. Do you find in that fact any reason for the falling off of the nett proceeds of the property?

Dr. W. I do. I visited the estate a short time since, and learned then that one large field of valuable cane that might have been preserved with proper attention, was lost for want of care, and that the stock and everything on the plantation had been used up as close as possible, and that Mr. Burnham at the commencement of his year had declined to make outlays, but towards the end finding that the returns were likely to be handsome, he had made some outlays.

Mr. B. Suppose no arrangement had been made between Dr. Judd and Mr. Burnham for his purchasing the property, would you have been a competitor, that is if it had been a free open sale?

Dr. W. I should probably have attended the sale.

Mr. B. The question is, would you have made an effort to buy the lease, but for that agreement by which it was secured under the control of Dr. Judd?

Dr. W. I think I should. It is not easy to say what I should have done at the time, but I did entertain the purpose of purchasing at first.

Mr. B. Then do I understand you that you were deterred from becoming a purchaser from the fact of the existence of this arrangement?

Dr. W. Yes. I was satisfied with the arrangement however.—The principal motive I had for becoming purchaser was the preservation of the property; I did not otherwise care to enter into the speculation.

Mr. B. Was it in your judgment a necessary consequence of that arrangement to depreciate the price which the property might have otherwise brought?

Dr. W. I think it was. If the public had been apprised of the value of the property to be sold, and the amount of it, it might have been sold for more.

Mr. B. You have spoken Doctor, of the report of Mr. De Fiennes; was any use made of that report in the negotiation between you and Dr. Judd for the lease of the plantation?

Dr. W. The Doctor presented me Mr. De Fiennes report when I complained of the extravagant or what seemed to me high rent; he referred me to the report to show that I could pay that rent and still ke a profitable business.

Mr. B. Was any estimate of the profit you would make based upon that report?

Dr. W. He referred to one estimate of Mr. De Fiennes' prospective of what the property might be made to pay with a farther outlay of capital, bringing up the returns to \$18,000 a year.

Mr. B. Did you consider that report was sent to you for the purpose of inducing you to come into the arrangement? what did you consider to be the object?

Dr. W. I do not know; I am not able to state. Perhaps to silence objections to what I considered a high rent.

Mr. B. Did Dr. Judd in the course of that negotiation ask more in consequence of the condition to guarantee you against the claims of the Belgian Company?

Dr. W. I think he did. I think he stated as I required the Government to make that guarantee, I ought to pay more.

Mr. B. What was the date of this arrangement?

Dr. W. This was in July, in the summer of '45.

Mr. B. I will come back again to a question of Mr. Ricord's.—Have you ever learnt from any circumstances that I was negotiating for a new contract in England?

Dr. W. I have not.

Mr. B. Have you ever learnt from any circumstance that I had abandoned the Belgian Contract before I returned here?

Dr. W. I have not. I always understood that you followed it up.

Mr. B. Having that contract in my hands with the power of annulling it, would you have considered it dishonorable in me to have proposed for the disposal of it to any other party?

Dr. W. I should not.

Mr. Ten Eyck. I would like Doctor, to ask you a question which Mr. Brinsmade just asked, and which I did not understand whether you answered definitely. It is of some importance in regard to the arrangement between Dr. Judd and Mr. Burnham, in reference to the first sale. Had not the arrangement been made between Dr. Judd and Mr. Burnham for Burnham to purchase the property, would you have been a competitor at that sale?

Dr. W. I think I should, although I was not anxious to speculate.

Mr. T. E. You would have been a bidder if this arrangement had not been made. Were you deterred from becoming a purchaser on account of this arrangement?

Dr. W. I was. I had no motive—

Mr. T. E. In this arrangement between Dr. Judd and Mr. Burnham, was Dr. Judd acting as the agent of Treasury Board, or in other words, as agent to the defendant in this suit?

Dr. W. I so understood.

Mr. T. E. Was this arrangement between Dr. Judd and Mr. Burnham, understood by you to stifle competition at the sale, and to depreciate the price of the property, or in other words, was that the necessary consequence of that arrangement?

Dr. W. I think it was. Mr. Burnham did depreciate the value of the property.

Mr. T. E. Subsequent to that arrangement?

Dr. W. Previous, sir. I saw very little of him after the arrangement.

Mr. T. E. After that arrangement was made did he say anything to you that was intended to depreciate the property?

Dr. W. I think not.

Mr. T. E. I want to know if after you concluded your present lease with Dr. Judd there was any dissatisfaction expressed at your consigning the agency of that business to Mr. Ladd?

Dr. W. I had a conversation with Dr. Judd in reference to that, and he inquired who I intended to make agent for the sale of the sugar; I told him Mr. Ladd, and he inquired why I did not give the agency to Mr. Paty, as he had the agency before, and was a better man. My impression is that Dr. Judd was not much gratified with my giving the agency to Mr. Ladd, as there was a controversy between them at the time.

*Cross-examined by Mr. Ricord.*

Mr. Ricord. I think you said, Dr. Wood, that you were anxious that the property should not be sacrificed, or that you so stated?

Dr. W. I was solicitous that the property should not be sacrificed. I was afraid that the sale would prove detrimental to the plantation; I was more solicitous about the property than I was about the amount of property to be recovered under the judgment.

Mr. R. There are several documents alluded to, concerning which, partial information has been brought out, and it is a point of law that when a document is alluded to in evidence, it may be called for and must be introduced. There is the contract between Dr. Judd and Mr. Burnham. I mean to introduce that in the direct and cross-examination both, it has been frequently alluded to. Also the charter of the vessel that went to Koloa, if there be one. Also I want to introduce the agreement with Ladd & Co., about the paper money being taken for taxes, which had better go along with Dr. Wood's testimony.

By the Board. You cannot introduce them but in defence.

Mr. R. I want to bring these in according to the rule we have followed all along. The paper money responsibility of Government has been spoken of as one object with Dr. Judd to have the plantation sold, but the whole object cannot be understood without the introduction of that paper.



By the Board. You can give all that in defence. They give the best story they can now, which of course, you do not complain of, and it is for you to qualify it when you come to your defence.

Mr. R. Why was there such a secrecy of knowledge in regard to that sale, let us have the whole history of that matter?

Dr. W. I suppose it was the fault of the sheriffs. I had no interest at all in giving publicity to it, and for my part, I received most of my information from Dr. Judd.

Mr. R. Could you not have derived it from the sheriff? You knew of the judgment?

Dr. W. I knew that there was a judgment.

Mr. R. And you knew of the levy?

Dr. W. I knew there was a levy upon it; I was pretty familiar then with the business between Messrs. Ladd & Co. and the Hawaiian Government.

Mr. R. Was it generally known there was a judgment in favor of the treasury board?

Dr. W. I believe it was.

Mr. R. Was it generally known that the sheriff held the execution?

Dr. W. Yes.

Mr. R. You say that Mr. Burnham borrowed \$100 to pay with in case he became the purchaser. Here is the contract which you have testified to between Mr. Burnham and Dr. Judd. It is very right that that contract should be introduced.

Mr. Ten Eyck. Mr. Brinsmade would not have asked about it if he had had the contract, but not having it, he asked those questions to ascertain what it contained.

Mr. R. I only ask for fair play. This is like putting me at a game of ten-pins. Why did you not ask for the contract, I would have produced it?

By the Board. You did not object to the evidence.

Mr. R. Because we had made an agreement not to raise small objections.

By the Board. When your defence comes you can introduce any thing you like to counteract their evidence.

Mr. R. Yes, when our defence comes.

By the Board. We think you are defending now; you are trying to disprove a thing they have not proved. If you will let them tell their story you may afterwards nullify it as much as you like. Your object now is only to ascertain how true the witnesses evidence is.

Mr. R. But has it not been decided that the highest evidence obtainable shall be introduced?

By the Board. But Mr. Brinsmade did not know of that contract.

Mr. R. Now you know.

By the Board. But you have allowed this evidence to be received without objecting. We have no objection to the introduction of the document if they have not.

Mr. R. You said you had no apprehension, Dr. Wood, of coming into collision with Government, but Dr. Judd had other objects, what were they?

Dr. W. He did not state them. I only gave an opinion which might amount to nothing.

Mr. R. What did the Koloa property sell for?

Dr. W. \$100 or \$150.

Mr. R. What was the actual price? What did Mr. Burnham's mortgage amount to?

Dr. W. He abandoned his mortgage.

Mr. R. Did not he agree to take something in lieu of it? What was the amount of his mortgage, was it \$6,000?

Dr. W. I should think it must have been.

Mr. R. Then he agreed to buy the plantation, so as to reap the benefit of the crop, for which he released the \$6,000, besides paying \$100?

Dr. W. I think you had destroyed all his confidence in the mortgage before that.

Mr. R. Was it not \$6,100 he gave for that year?

Dr. W. I do not know.

Mr. R. Was it a *bona fide* debt due him?

Dr. W. It was not. That mortgage was made for the security of Mr. Burnham and the other clerks.

Mr. R. How did he dispose of the proceeds of that year?

Dr. W. He applied a part to the liquidation of his own claims of \$1,500. Then he had a balance of funds in his hands, part of which he paid to Mr. Wm. Lacy.

Mr. R. Did he pay any of it over to Hooper, for Cary & Co., of New York?

Dr. W. I understood he did.

Mr. R. How much?

Dr. W. About \$2,500.

Mr. R. The property did not go so cheap after all, and the money went to the legitimate ends for the benefit of Ladd & Co. That was the desire. You said that Dr. Judd told you he did not want to commit himself, because private conversations had been repeated; will you explain that?

Dr. W. His words were these, that he had had frequent private conversations, as he understood them to be, and he afterwards heard them repeated in the streets.

Mr. R. Did you understand that affidavits were made of them?

Dr. W. No.

R. Were not people in the habit of having trifling conversa-

tions at that time with Dr. Judd, for the purpose of afterwards making affidavit of what he had said when off his guard?

Dr. W. I do not know that that sort of thing was peculiar at that time, it has always been so in Honolulu since I have been here.

Mr. R. Did you consider he was the proper person to apply to; did you consider him the proper person to keep the sheriff's accounts and such things as that?

Dr. W. I did not consider him bound to give me the information.

Mr. R. You say Mr. Burnham did not fulfil his contract, and that was the cause of the deterioration of the property. Was that contract not made to be fulfilled?

Dr. W. I do not know the reason. I was informed by his successor, Mr. Lindsey, that as he was going away, he wished to make the plantation pay as well as it could for that year.

Mr. R. Who was to blame for the non-fulfilment of the contract?

Dr. W. I think Mr. Burnham was in fault.

Mr. R. You say that if it had been free you would have attended the sale, and that you would have purchased at the sale. Would you have given as much as Mr. Burnham gave? I mean the whole amount of property that was actually paid?

Dr. W. Do you mean to the actual amount ultimately paid?

Mr. R. I mean the payment to Mr. McClurg and other clerks, the payment to Mr. Burnham, the payment of Messrs. Cary & Co., and \$100?

Dr. W. No.

Mr. R. Would you have given as much?

Dr. W. No, I do not think I should at the time of the sale, because I did not know the property was worth so much.

Mr. R. You say you were satisfied with the arrangement?

Dr. W. I was.

Mr. R. And that you were deterred by that circumstance. How do you mean to apply that word deterred? Deterred means to be frightened or scared away from any thing, and how do you mean that you were deterred. You mean that you were satisfied with the arrangement perhaps?

Dr. W. The plantation was safe. I did not care what was got in the judgment; I did not care about that, what I looked to was the property.

Mr. R. You thought it was a good arrangement, and as favorable to Ladd & Co. as any other party?

Dr. W. I did not think it was unfavorable to the plantation or to Ladd & Co. My belief was that the arrangement was better on the whole for the sale of the property, than if it had been an open public sale.

Mr. R. It was open. Do you consider it was the duty of Dr Judd to go about the streets giving *viva voce* notice of the sale?

Dr. W. I think it was the duty of the sheriff to get the most for the property that he could.

Mr. R. Did he?

Dr. W. I think he might have got more on his judgment.

Mr. R. For whose benefit would it have been?

Dr. W. For the party holding the judgment.

Mr. R. Who held it?

Dr. W. The Government.

Mr. R. Then for whose benefit was it that it was done in the way we speak of?

Dr. W. The creditors of Ladd & Co.

Mr. R. They spoke of Mr. De Fiennes' report being sent to you at the time you were last negotiating with Dr. Judd in regard to the property. Was that not predicated upon the supposition that you had known all about it before?

Mr. R. Was not Dr. Judd laboring under the supposition that you had read it before?

Dr. W. Perhaps he was.

Mr. R. He showed it to you for the purpose of your seeing Mr. De Fiennes' calculation, to show what the property would pay. Do you not think that he had not much confidence in the report, but still referred you to it?

Dr. W. He did so to silence my objections to what I considered a high rent for the property.

Mr. R. You said that the consequence of the arrangement with Mr. Burnham was to depreciate the price; how do you mean by that?

Dr. W. I do not remember to have stated that. I stated that Mr. Burnham depreciated the value of the property previous to the arrangement.

Mr. K. I have got down in my notes that the depreciation was the consequence of the arrangement.

Mr. Ten Eyck. Depreciation of the price.

Mr. R. A depreciation towards Government. You say, Dr. Wood, you would have given more than \$100 to the Government for the lease, but would you have given the \$1,500 to Mr. Burnham, and the \$2,500 to Messrs. Carey & Co., besides the amount paid to Mr. McClurg, and the other clerks?

Dr. W. No.

Mr. R. You say that there was a dissatisfaction on the part of Dr. Judd at your proposed appointment of Mr. Ladd; that he objected to Mr. Ladd, and asked why you did not appoint Mr. Pay: I should like to know whether Government, Dr. Judd being agent in that respect, or Government through him has any interest in the plantation at Kauai.

Dr. W. He has one half.

Mr. R. Has he a right to say who shall be the operatives there? Would you consult him as a coadjutor in appointing such persons?

Dr. W. I did not consider myself bound to consult with him, but perhaps as a matter of courtesy I might have done so.

Mr. R. Had he a right to give his opinion in such matters?

Dr. W. I think he had a right but not to control me.

Mr. R. Has he tried to control you?

Dr. W. No.

Mr. R. Do you know whether it is as agreeable to Government to have Mr. Ladd appointed agent as it would be to have Mr. Paty?

Dr. W. I think it is not.

Mr. Ten Eyck. May I ask one question? You have said something about what Mr. Burnham paid for the property, that he paid \$100 or \$150, now what did he make, what was the nett profit he made that year?

Dr. W. The plantation netted about \$10,000. The net produce was \$10,000.

Mr. T. E. After paying those wages what was left?

Dr. W. I do not know. He paid himself \$1,500; he paid about \$2,000 for the redemption of the paper money and put about \$3,000 in his own pocket for his services that year.

Mr. T. E. That \$3,000, what was that?

Dr. W. Proceeds.

Mr. T. E. Was it so much clear profit?

Dr. W. His salary was \$2,000, but he made about \$3,000.

Mr. T. E. What, was that \$2,500 paid to Mr. Hooper for Messrs. Cary & Co.? What was their interest?

Dr. W. One half.

Mr. T. E. Was that the half of the profits of the estate for one year, belonging to Cary & Co., over and above those expenses?

Dr. W. It was.

Mr. T. E. Then, do I understand that he had cleared \$5,000 over and above all expenses and all those obligations?

Dr. W. Yes.

Mr. T. E. And he bought it for \$150. Would it have been a bad speculation to pay more than the \$150 for it?

By the Board. Did he buy it with those obligations attached to it?

Dr. W. He was to pay some.

By the Board. Was he to pay Mr. McClurg and the other clerks?

Dr. W. No, he was under no legal obligations. He paid the clerks about \$2,500.

By the Board. What did he get over after paying those sums?

Dr. W. I think about \$5,000.

Mr. T. E. You have said that this \$100 was for the benefit of

Government, and those other sums also went to the credit of Government, but to whose injury was that? Suppose it had been a fair open sale and no endeavors made to influence opposition, how would it have been then?

Dr. W. I suppose they would have got more, and would have given Ladd & Co. credit for it.

Mr. T. E. Do you understand that if it had been a fair open sale it would have brought more money?

Dr. W. Yes, and might have canceled the judgment.

Mr. T. E. How could Ladd & Co. have been interested by this arrangement?

Dr. W. Mr. Burnham paid some money for the benefit of his fellow-clerks.

Mr. T. E. How did Ladd & Co. derive any benefit from the amount paid to Mr. McClurg and others?

Dr. W. It canceled a debt due them by Ladd & Co.

Mr. T. E. Was there any condition that Mr. Burnham should pay those individuals?

Dr. W. There was no condition to that effect; what remained after performing the conditions of the contract, he was to do what he liked with.

Mr. T. E. You said you knew there was a levy upon the property?

Dr. W. An attachment.

Mr. T. E. How do you know that, or in other words, do you know that there was?

Dr. W. I stated at the time, that I understood so from Mr. Burnham.

Mr. T. E. You did not know any thing about it yourself?

Dr. W. No.

Mr. Brinsmade. Well, Dr. Wood, would you on any earthly consideration have entered into that arrangement?

Dr. W. I would not.

Mr. B. Do you know that Ladd & Co. protested against the whole proceedings?

Dr. W. They did, I believe.

*Cross-examined by Mr. Ricord.*

Mr. Ricord. What was meant by those words, do what he liked with it?

Dr. Wood. I stated the contract to the best of my recollection; I cannot say that these are the particulars contained in the document.

Mr. R. Do you not recollect whether you heard Mr. Ladd or Mr. Hooper express their satisfaction with or concurrence in that arrangement?

Dr. W. All I know, is that Mr. Ladd opposed it and Mr. Hooper too. I, as the agent of Cary & Co., believing that that arrangement, as the property was to be sold, was the best.

Mr. R. Were you ever made acquainted with the conversation that took place at a meeting of these same gentlemen on this same subject?

Dr. W. Not that I recollect.

Mr. R. That the whole of these items entering into that arrangement were projected there?

Dr. W. I know nothing about it.

Mr. R. How much would you have given for the lease? How much were you prepared to give?

Dr. W. I had not calculated the amount that I would have given, because it would have been useless until I had visited the plantation.

Mr. R. Would you have given \$5,000?

Dr. W. No.

Mr. R. \$3,000?

Dr. W. No, not without seeing it. Mr. Burnham had made unfavorable representations about the plantation.

Mr. R. Suppose the plantation to have been as good as it is this day, what would you have given?

Dr. W. The plantation was then in better condition.

Mr. R. Well, in better condition then, what would you have given for it if you had seen it?

Dr. W. If I had been satisfied that it would have given \$10,000 returns, I would have given \$7,000.

Mr. R. Would you, in the very best state of the crops, have known that they would yield \$10,000 profit?

Dr. W. Not at that time.

Mr. R. Would you have run the hazard of paying 7 or \$8,000 for it as Mr. Burnham did?

Dr. W. That was on condition, I believe, that he had funds in his hands sufficient to pay those different amounts.

Mr. Ten Eyck. With the knowledge that you now have, if you had had that same knowledge at the time of the sale, what would you have been willing to pay for the plantation in the state it was then?

Dr. W. \$7,000.

Mr. R. Why did you not have that knowledge then?

Dr. W. I did not visit the plantation.

Mr. R. Did any body prevent you?

Dr. W. No, I could have gone down.

By the Board. We understand you to say there was no legal obligation upon Mr. Burnham to pay those persons, then why did he pay them? We mean Messrs. Cary & Co. and Mr. McClurg and others?

Dr. W. He was under no obligation.

By the Board. Why then did he pay them?

Dr. W. Mr. Burnham was a man of good probity.

Mr. Ricord. You say you were not present at that meeting, then we shall have to get that evidence elsewhere, for there are documents. You will see them.

By the Board. What claims had those people on him? It is not customary to give 2 or \$3,000 to one man and so much to another. What were the claims upon him?

Dr. W. I did not understand that Ladd & Co. had any legal claims upon Mr. Burnham, but he had been in their employ, and I believe he stated that he did not want to make money off the plantation, farther than to pay what was due to him. When he had paid himself, with what remained he said he would pay those other persons.

By the Board. Do you know if he stated that to Dr. Judd?

Dr. W. I do not know whether he did or not.

By the Board. You say he abandoned the mortgage that was given to secure the other clerks as well as himself. In giving up that mortgage and entering into that arrangement, did it never enter into his mind that if he secured himself, he was in honor bound to secure them also, and may not that have been a reason for his taking the course he did?

Dr. W. I think he might have had some such feeling.

By the Board. Was he not under some obligation to Government that they should get some part of the profits? Did they get any?

Dr. W. No.

Mr. Ten Eyck. They were released from their responsibility to redeem the paper money.

By the Board. Were they legally responsible?

Dr. W. I do not know.

The Court then adjourned until Monday, the 21st instant, at 7 o'clock P. M.

HONOLULU, 16th December, 1846.

In accordance with the agreement of the previous meeting, the following persons met this day at the Foreign Office for purposes connected with the examination of certain of the archives, namely: Messrs. Wyllie, Williams, Marshall, Ricord, Ten Eyck, Brinsmade and Hopkins.

Mr. Wyllie. Gentlemen, I wish to afford all the information I have, connected with the matter in question: the best way will be to take first, such passages or documents as may be pertinent, and after that I shall be perfectly willing to submit myself to your examination on any point that you may wish to elicit; the object being the recovery of the truth and nothing but the truth.

By the Board. The documents on the table have reference to



many matters connected with the King's affairs, and it is only necessary that those things relating to the case should be made known to the parties, and from them they can take such parts as they want. You had better, Mr. Wyllie, point out to us the particular parts of those letters relating to the point.

Mr. Brinsmade. I would suggest to the arbitrators that Mr. Wyllie have the kindness, first to lay before us the letters passed between Dr. Judd and Mr. Richards while Mr. Richards was in Europe and abroad from here, which have any reference at all to the interests of Ladd & Co. And afterwards, whatever correspondence besides, which this department may have had relative to the affairs of Ladd & Co., or the Belgian Contract. Mr. Wyllie, himself, presenting the passages in those letters which allude to the subject.

Mr. Ricord. With regard to the letters that passed from Dr. Judd to Mr. Richards, they were private in a great measure, being addressed "My Dear Sir," "My Dear Brother," and so on. I can procure them from Mr. Richards, who has them in his own room; they are all bound together.

Mr. Brinsmade. I presume, however, that they are the diplomatic correspondence, although, perhaps, other matters are introduced.

Mr. Wyllie. I have not seen that volume. I have letters from Mr. Haalilio and Mr. Marshall, and one or two from Mr. Richards to Dr. Judd. They do not bear upon the Belgian Contract; they bear upon political matters, such as the independence of the Islands etc.

Mr. Brinsmade. These are the letters, I presume, which Dr. Judd received by virtue of his appointment.

Mr. Wyllie. This is the bundle I allude to. It will be seen on reading the letters to the Commissioners, which Mr. Ricord has alluded to, whether these are replies. For my own part, I have seen no letters from Dr. Judd to the Commissioners in relation to the Belgian Contract during the whole time they were absent. I merely state this, but of course the powers of the human memory are limited.

Mr. Ten Eyck. I would suggest that Mr. Wyllie take those letters.

Mr. Wyllie. I have those letters.

Mr. Ten Eyck. Let him read them, you will then see whether they contain any thing you want.

Mr. Ricord. Now, here, I have just procured the very identical letters received abroad. Here are the blanks of which mention has been made.

Mr. Wyllie. I never saw that before. Those letters were never committed to me as part of the records.

By the Board. I suppose, Mr. Wyllie, those letters which you have, are copies from the originals?

Mr. Wyllie. Yes; of all official letters. But I presume upon a question so seriously affecting public and private character, no letters can properly be called private which relate to the point?

Mr. Ricord. I would remark, that there are some letters here from Dr. Judd to Mr. Richards, which are private, and in which, amongst other things, he speaks of Mr. Pelly and the Hudson's Bay Company, and takes upon him to presume this and conjecture that: now, it would be very wrong to expose the remarks thus written.

Mr. Wyllie. If I had been aware of the existence of those letters I would have gone over them and marked them as I have done those in my possession.

By the Board. It is impossible for the arbitrators to know what the parties may consider applicable.

Mr. Ten Eyck. I thought it was going to be left to you, gentlemen.

Mr. Brinsmade. I was in Europe with Mr. Richards in great harmony, and all the letters that he received from Dr. Judd I was made acquainted with, as I was with many that came from his wife. I know, that in some of those letters, he gave advices in regard to private business; but whenever Dr. Judd gave him advice or instruction with regard to the duties of his mission, such are the parts we want to examine, if they bear at all upon my negotiations.

Mr. Ricord. Here are all the letters from Dr. Judd to Mr. Richards. I should have no objections to allow Mr. Ten Eyck to peruse them entirely; indeed, I have brought them here for the purpose of being read; but so far as those in Mr. Wyllie's possession are concerned, I say it is not proper to allow the diplomatic agent of any foreign nation to examine them, because he would there get at the arcanæ of State.

Mr. Wyllie. Well, I should say that one of two things are to be done. Here are Dr. Judd's private letters to Mr. Richards, and here are the answers; now, which will you begin with first?

By the Board. Those of Dr. Judd can be read at leisure, we think.

Mr. Wyllie. But as those are the originals, perhaps you had better read them first, because they will explain my letters, which are the answers.

Mr. Ricord. I would observe that those addressed to William Richards, Esq., envoy etc., and commencing sir, should be read. but those beginning Dear sir, and ending your brother and so forth. are not official, and do not bear upon the thing.

Mr. Wyllie. But you do not mean to say that if there is any statement in Mr. Judd's private letters, that Mr. Brinsmade may not avail himself of it?

Mr. Ricord. No. I do not say so.

Mr. Marshall. Now this letter is of my writing; if asked whether it was of an official nature, I should say yes.

Mr. Wyllie. Now, if you are going to proceed, which papers do you think proper to go on with first?

By the Board. Perhaps you will read your letters, and those extracts which are thought applicable can be marked and copied out afterwards. It is stated that extracts are to be taken, but we suppose law compels the filing of the whole letters, if demanded by the opposite party. When Mr. Ricord comes to be on the defensive he can file the whole if he insists on it.

Mr. Ricord. I ought to be allowed to consult with Mr. Ten Eyck as to what shall be printed as a matter of courtesy.

Mr. Wyllie. I understand your idea gentlemen, arbitrators, whether extracts being filed shall prevent the necessity of filing the whole.

Mr. Ten Eyck. My idea is this; Mr. Wyllie was *subpanaed* to appear with all the documents relating to the affair. Mr. Richards, it will be recollected, testified about those letters, and Mr. Ricord said he would file them. Now, my idea, then, was this, that if Mr. Ricord placed them in your hands, I would have the privilege of looking over them, and wherever I found any thing appearing to favor our side, I would extract from it, and if Mr. Ricord thought it best, when he came to be on his defence, to file the whole, I could not object.

Mr. Ricord. But do you not see you are borrowing my weapons?

Mr. Ten Eyck. But have I not a right, if I thought proper, to do so, to *subpana* you to appear with this correspondence?

Mr. Ricord. In that case, the whole letter would be read in court.

Mr. Ten Eyck. Well, if I should extract any thing that related to the affair, Mr. Ricord would want the whole, I suppose, and I could not object; so that when we come to any thing that applies we had better, perhaps, have the whole of it taken out.

Mr. Wyllie. As much, or the greater part of those letters relate to political matters, which, as U. S. Commissioner, Mr. Ten Eyck might feel a delicacy in having taken any recognizance of, it appears to me that the arbitrators might, perhaps, read over the letters and mark every thing *pro* and *con*. I propose this, because were I in Mr. Ten Eyck's position, I would avoid every thing that might have the semblance of examining into the relations of other countries with this.

Mr. Ten Eyck. I thought they were not political; what the arbitrators see bearing upon the case, they will mark perhaps.

Mr. Wyllie. Mr. Marshall is already more or less acquainted with these things, and there can hardly be any objection to submitting the latter to a gentleman whom the Government has had so much

confidence in as to appoint him its arbitrator. I hope, however, Mr. Williams will be as ready to decide against the Government as for it, should he be convinced in favor of the other party.

Mr. Ten Eyck. I will leave the whole matter to the arbitrators, whatever they point out as being applicable to this case we will take as being the only things applicable.

Mr. Ricord. But if we wish to extract, we may do so?

Mr. Ten Eyck. Yes, that is understood.

Mr. Brinsmade. I would suggest, that with all this matter, I am as familiar as Mr. Richards himself; so that it would assist the gentlemen, arbitrators, if they would allow me to look over the letters with them.

Mr. Wyllie. That, I think, lies entirely with the arbitrators.

Mr. Ricord. Let me make a proposition, that Mr. Brinsmade and myself meet with the arbitrators to read those letters?

Mr. Ten Eyck. I leave it to Mr. Brinsmade.

Mr. Brinsmade. Are Mr. Richards' answers together with Dr. Judd's letters to him?

Mr. Wyllie. No, the answers are with me. That is why I suggested that you should read the others first. In the year 1841, I find no documents of any importance, relating to the matter at all, excepting certain letters to the Queen of England, and to John Tyler, President of the United States, which appear to have been sent by the hand of Mr. Brinsmade. I have got them here; they are in native, in fact they have been published, and do not bear very materially, if at all, on the matter, but I will begin at the beginning.

Mr. Ricord. They have been testified to by Mr. Richards, have they not?

Mr. Wyllie. In the year 1842, the first document that I find does not relate directly to the Belgian Land Company, but incidentally relating to it, is the Commission to Mr. Haalilio and Mr. Richards, dated 8th April, 1842, granting them powers subject to the King's ratification.—[Appendix, Doc. D, No. 1.]

Mr. Wyllie handed the document to Mr. Ricord who read it aloud.

Mr. Ricord. I would like to have a certified copy of that. I should certainly like that to be introduced if it is a part of Mr. Wyllie's evidence.

Mr. Wyllie. If that has not been filed, I would state, that as a matter of right on behalf of the King, it ought to be filed.

Mr. Ten Eyck. You will file it; of course. But it is not a matter of course, that whatever Mr. Wyllie presents is to be filed. It is all coming in by and by; but I do not like to introduce evidence to build up the defence.

Mr. Ricord. It can be filed in my name in the appendix.

Mr. Wyllie. The next letter is from Mr. Brinsmade.

Mr. Brinsmade. It is private.

Mr. Wyllie. I consider, and I put it to Mr. Ten Eyck, whether it is not so, that in matters deeply affecting parties, any evidence should be read that throws light on the question, and that it is usual in every Court to use private letters.

Mr. Ten Eyck. It depends upon how it is introduced. My objection would be to our being made to file any thing that tends to injure Mr. Brinsmade. Mr. Ricord can do it.

Mr. Brinsmade. I think that as I am searching for evidence in support of my case, should any thing turn up which would favor the other side, the introduction of it ought to be left optional with me.

Mr. Wyllie. Then I suppose you will do the same with Mr. Ricord.

Mr. Ten Eyck. This is the principle — that the party may introduce just what evidence he sees fit, so long as the other party does not object. If Mr. Ricord proposed to offer in evidence any written document, I should expect him before doing so to hand it to me, and I should do the same by him. Now the witness has nothing to do with putting a paper in evidence. That is why I objected before. — Now I would in all this matter have Mr. Brinsmade exercise his own judgment in regard to these things: he must determine what he wants. I think on the whole I ought not to be here. Mr. Brinsmade knows of course what he requires; but I ought not to look at those papers. My idea is this, — I do not want to see the letters. It is at my own instance that I do not wish to see them. Therefore I had better not have any thing to do with it. I will leave this part of the proceedings to the arbitrators.

Mr. Wyllie. Then I will be happy when the arbitrators call upon me again to give publicly an answer to any question or cross question that may be put to me, because I want the truth, the whole truth, and nothing but the truth should come out.

Mr. Brinsmade. I would like to read this letter to show that it has no bearing upon the point. I would not wish to file it myself. — (Mr. Brinsmade read the letter in question.)

Mr. Wyllie. I think it showed that you took an interest in Government.

Mr. Ten Eyck. I suppose it is well understood that Mr. Brinsmade may examine the letters, and that what he thinks proper to file he may file?

Mr. Ricord. Yes, even though it may be an *arcantum* of the Government of Great Britain.

Mr. Ten Eyck then took his departure, not wishing to be present whilst the documents were read.

Mr. Wyllie then produced the letters in their chronological order.

In a letter from Mr. Richards to Dr. Judd, dated London, 1st March, 1843, (D<sup>d</sup>. No. 2,) there occurred a paragraph which Mr. Brinsmade said he would like an extract of to reflect upon, but he

would not say until he saw what bearing it had whether he would file it.

Mr. Ricord said that if Mr. Brinsmade decided not to file it, he would do so himself.

Mr. Ricord also wished an extract from a letter from Haslilo, Richards and Marshall to the King, dated 19th August, 1843. (Appendix, Dd. No. 3.)

Mr. Brinsmade next wished to file a paragraph from a letter from Mr. Marshall to Dr. Judd, dated Charlestown, 15th September, 1843. (Appendix, Cc. No. 1.)

Mr. Brinsmade next wished an extract from a letter from Mr. Richards to Dr. Judd, dated 18th September, 1843. (Appendix, Cc. No. 2.)

Mr. Brinsmade next wished an extract from a letter from Mr. Richards to Dr. Judd, dated 1st October, 1843. (Appendix, Cc. No. 3.)

Mr. Brinsmade next wished a paragraph from a letter from Mr. Richards to Dr. Judd, dated Paris, 29th January, 1844. (Appendix, Cc. No. 4.)

Also, two paragraphs from a letter from the same to the same, dated Brussels, 30th March, 1844. (Appendix, Cc. No. 5.)

Mr. Ricord would wish asterisks, thus \* \* \* \* \* to be inserted between the two paragraphs, to show that they had no bearing upon one another. He also said he would like the whole letter, as Dr. Wood had used some of the expressions contained in it in his evidence.

Mr. Ricord also wished a paragraph from a letter from Mr. Brinsmade to Dr. Judd, dated 14th September, 1844. (Appendix, Dd. No. 4.)

Also, a paragraph from a letter from Sir George Simpson to Dr. Judd, dated London, 29th November, 1844. (Appendix, Dd. No. 4.)

The meeting then broke up.

No. 1.

DEPARTMENT OF LAW, )  
Honolulu, Jan. 9th, 1847. )

GENTLEMEN:—

His Majesty has since the 2nd instant been entreated through me to consider some proposals benevolently made by Jules Dudoit, Esquire, Consul of France, who on that day, at the request of Messrs. Ladd & Co., offered his mediation with the view to terminate amicably the arbitration depending before you. Your ardent

labors are known to and fully appreciated by the King and Chiefs, who entertain the fullest confidence in your integrity, judgment and determination to do justice between his government and those parties who have set up claims against him, which his Government consider unfounded either in truth or justice. Yet his Majesty moved by a desire to do whatever his honor would allow, for the numerous private parties to whom Ladd & Co. have contracted debts, in the full knowledge that they had not the means of payment, and anxious to pay that respect which any benevolent project of the Consul of France always merits, could not consistently act upon even his proposals without full information from me, his Counsellor in the Law, concerning the state and prospects of the suit. In compliance therefore with a resolution, I laid before the King and explained *seriatim* the plain facts of the case, a copy of which I have the honor to enclose you by command of His Majesty. Out of the facts so disclosed, arose a very serious question involving a point of honor, without a settlement of which His Majesty would not condescend to listen even to any proposal to terminate the arbitration. His Majesty's Council were unanimously of opinion that under the circumstances, any compromise of the depending suit would involve with it a compromise of the King's honor and integrity, and although the Privy Council have since the 4th instant had repeated protracted and serious debates, they have not been able to satisfy the King's scruples on this head, as their Resolutions, a copy of which is by the King's command enclosed, will prove to you. To the object and wishes expressed in these Resolutions, His Majesty has ordered me respectfully to call your attention, in doing which,

I am Gentlemen,

Your obedient, humble servant,

JOHN RICORD, Att'y Genl.

MESSRS. STEPHEN H. WILLIAMS & JAMES F. B. MARSHALL,  
Arbitrators, &c., &c.

[ENCLOSURE TO NO. 1.]

### COPY OF SIX RESOLUTIONS,

*Passed by the Privy Council, convened at the Palace on the 7th of  
January, 1847.*

1. Resolved, That by Messrs. Ladd & Co.'s Protest or Caveat of the 24th April, 1845, by their Protest of the 7th May, 1845, by Mr. Hooper's Protest of the 9th of August, 1845, Messrs. Ladd & Co.'s Advertisement of the 29th August, 1845, and by Mr. Brinsmade's Protest of the 30th April and 5th May, 1846, the King and his Government have been maligned and injured.

2. Resolved, That so far as at present known, or as appears by

evidence, the claims of Messrs. Ladd & Co. upon the King for \$378,000, are a flagrant attempt at extortion, made under circumstances of very great ingratitude, and urged upon the King with an effrontery deserving of condign punishment.

3. Resolved, That whereas, Anthony Ten Eyck, Esq., Commissioner of the United States, acting as Counsel for Messrs. Ladd & Co., on the evening of Saturday, the 12th of December last, before the Arbitrators, and in presence of his brother Counsel for the same parties, J. B. DeFiennes, Esq., and of numerous listeners, did coolly, deliberately and without provocation, utter the following words: "*The Government have stript Ladd & Co. of all their properties*," thereby fastening a deep stain upon the King and his Government, it is not consistent with the honor of His Majesty, and the respect due to his Government, that even the principle of a compromise, however much desired by His Majesty, be entertained, until after Mr. Ten Eyck has had a fair opportunity either to prove the charge by Messrs. Ladd & Co.'s Books, or to withdraw the offensive words in the same public manner in which they were made.

4. Resolved, That whereas, the arbitrators, on behalf of Messrs. Ladd & Co., plaintiffs, and against the King, defendant, on the 15th of December last, did summon the King's Minister of Foreign Relations to produce before them all documents or papers of any kind in the archives of his Department, relating to the Belgian Contract, and whereas, the said Minister, with His Majesty's permission, did appear, produce and make extracts from such documents and papers relating to the Contract aforesaid, and whereas, the King's Attorney General did in like manner produce and deliver to the arbitrators, the whole unmutilated letters, instructions, &c., from the King's Government to His Majesty's Commissioners in Europe, and whereas, the plaintiffs have thus had the benefit, for the prosecution of their suit, of all the King's papers thereto relating, it is not only fair, equitable and just, but it is the imperative duty of the arbitrators, previous to rendering a judgment on the merits of the points at issue, to place the King in the same position, for his defence, that they have already placed Messrs. Ladd & Co. in for their prosecution, by in like manner demanding and obtaining access to and making extracts from, all the documents and papers of Messrs. Ladd & Co., and of Mr. Briemadé, relating to the Belgian Contract aforesaid, and especially the books of accounts of that firm, so as to prove or disprove the charge made by the United States Commissioner, Mr. Ten Eyck, that *the Government have stript Ladd & Co. of all their properties*.

5. Resolved, That after the King's honor and rights in the respects mentioned have been fully vindicated, the King and Council, duly appreciating the friendly motives of the Consul of France, and desirous of co-operating to the relief of Messrs. Ladd & Co.'s creditors, will be in a condition to receive and consider in a spirit of



peace and conciliation, the proposals which the Consul of France has made to the King's Attorney General.

6. Resolved, That a copy of these Resolutions and of the plain facts in this remarkable suit, submitted to the King in Council by the Attorney General, be passed by him, officially, to Mr. Dudoit, and to the arbitrators, and that all further proceedings on this subject be adjourned until after a reply from them have been received.

I hereby certify that the above is a correct copy from the records of the Privy Council.

JOHN RICORD,  
Attorney General.

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No. 2.

ARBITRATORS' ROOMS, January 11, 1847.

SIR:—

We have the honor to acknowledge the receipt of your communication of the 9th instant, enclosing a copy of six Resolutions passed by the Privy Council convened at the Palace on the 7th of January, 1847. Also a document entitled, "Plain Facts in the suit of Messrs. Ladd & Co. against the Hawaiian Government, for \$378,000."

In regard to the 4th Resolution, with all due deference to the opinions of the Privy Council, we feel that in assuming this arbitration, we have taken upon ourselves responsibilities to a higher power, and consequently cannot allow the measure of our duties to be defined by either of the parties to the suit. And we do not consider it to be our "imperative duty" to summon witnesses, or call for papers in behalf of either party, unless required to do so by such party in the regular course of the proceedings of the arbitration.

We cannot but express our surprise at your enclosing to us the document headed, "Plain Facts in the suit of Messrs. Ladd & Co. against the Hawaiian Government for \$378,000." Having in our note of the 28th November last, requested of both parties, "that in our future intercourse no mention should be made in relation to its merits, or any points connected with the proceedings, other than at the place regularly appointed for the legal meetings," we are at a loss whether to view the act as an intentional disregard of our request, or from doubt of our ability to understand the merits of the case, or an improper attempt to bias our judgment. But in either view, we consider that it would be highly improper for us in our present position, to receive from either party any evidence, or partial summing up of the case, except in open court, and in the regular course of the ar-

bitration. We have therefore declined reading the statement of Plain Facts, and beg to return it enclosed.

We wait the pleasure of the parties to resume the sittings of the arbitration, which we had suspended at the request of Messrs. Ladd & Co. with the concurrence of yourself as attorney for the other party, and remain,

Your obedient servants,

STEPHEN H. WILLIAMS,  
JAMES F. B. MARSHALL,  
Arbitrators.

JOHN RICORD, ESQUIRE,  
H. H. M's. Attorney General, &c., &c.

No. 3.

DEPARTMENT OF LAW, }  
Honolulu, 12th January, 1847. }

GENTLEMEN.—

I hasten to reply apologetically to your note of yesterday, just received, returning me the document entitled "*Plain Facts in the suit of Messrs. Ladd & Co. against the Hawaiian Government, for \$378,000.*" I had been directed by the King's order in Council, to lay that document before you, not as containing facts to be so considered by you as arbitrators, but simply as the basis of the resolutions accompanying them, and so entered upon the records of the Privy Council. I never intended nor supposed that they would weigh with you as facts until proven, which I informed the King, on submitting them, could be done by documentary evidence exclusively.

That you may the more readily acquit me of an intentional design to overlook your note of the 28th November last, I again enclose you the King's resolution ordering me to send you that statement of plain facts. You must readily perceive that this resolution operated upon me as a law of the land, from which I had no option to depart. Having once executed it however, I am now relieved from the responsibility of disobeying the King's order. The King and Council were unacquainted with your note to me of the 28th November last, since I have, in the spirit of your rules, carefully avoided disclosing that as well as the printed records of the arbitration. No portion of the details of your proceedings, or of the evidence, has, from scrupulous deference to your wishes respecting secrecy, ever been made known to my client.

I beg also that you will not lay too much stress upon the words of the 4th resolution, "the imperative duty" of the arbitrators. They

were not employed in a dictatorial sense, as your note would seem to imply your understanding of them. But in my view both the King and Council understood them to convey an impression of the parity and like treatment which they expected you would not hesitate to accord His Majesty in regard to the books and letters of Ladd & Co., when it became proper, according to your rules and those of the law, for me to take up the King's defence. Nor did the idea once occur, that you would withhold such parity in proper turn when requested for my client.

I am not aware of having requested you to postpone the arbitration in this or any other instance. Jules Dudoit, Esq., Consul of France, presented me certain terms of arrangement, on the 2d inst., as explained to you in my note enclosing the King's resolutions on the 9th inst. The courteous consideration which those terms demanded at my hands, seemed inconsistent with the labor incident to the arbitration, and I therefore on the 3d, addressed Mr. Dudoit a note, a copy of which is enclosed. On the 4th, whether in consequence of that note or otherwise, I know not, but I had the honor to receive from you a note, informing me that the arbitration had been deferred.

I am far from desiring any delay in your proceedings under the compact, being and having always been but a passive awaiter of your behests, ready and willing to come before you at any time you may appoint, and fully and confidently relying upon the merits of my client's cause.

Yet hoping that the interests of Messrs. Ladd & Co.'s creditors may still be rendered compatible with the King's honor, and believing that the offered mediation of Mr. Dudoit would terminate to the relief of my arduous duties,

I have the honor to be, Gentlemen,

Your obedient servant,

JOHN RICORD, Attorney Général.

Messrs. STEPHEN H. WILLIAMS, JAS. F. B. MARSHALL,  
Arbitrators, &c., &c.

[ENCLOSURE TO NO. 3.]

DEPARTMENT OF LAW, }  
Honolulu, 3d January, 1847. }

MY DEAR SIR:—

I have received and will as early as possible lay before His Majesty the project which you have suggested for terminating the arbitration between this Government and Messrs. Ladd & Co.

I can of course, venture no opinion as yet regarding the result.

I will acquaint you with His Majesty's views when made known to me.

It might be advisable, should Messrs. Ladd & Co. really desire any favorable result from your endeavors, that they being the plaintiffs, should afford a stay of their proceedings for a few days, to enable the subject of your last communication to be considered by the King and chiefs.

As defendant I have no legal option in the case, and must attend the Board of Arbitrators whenever their meetings occur;—one is notified to me for Monday, at 7 o'clock.

I am very truly yours,

(Signed,)

JOHN RICORD.

JULES DUDOIT, Esq.,  
Consul of France, &c.

No. 4.

HONOLULU, April 6, 1847.

SIR:—

Since our appointment as arbitrators under the compact of July 13th, 1846, between Messrs Ladd & Co. and the King and Government of the Hawaiian Islands, we have at various times at the request of the parties, suspended our sittings for weeks at a time, in order that an amicable arrangement or compromise might be effected between the parties, that would relieve us of our very responsible duties.

We have now however, for more than three months delayed the proceedings of the arbitration, and as we are very desirous of being released as early as possible from the obligations of the compact under which we serve, and are informed that the present delay is caused by yourself in not answering the propositions of the committee of Ladd & Co.'s creditors, we beg to be informed whether you are prepared to give such answer, or are ready to release us from our obligations as arbitrators.

Waiting an early reply, we remain,

Your obedient servants,

STEPHEN H. WILLIAMS,

JAS. F. B. MARSHALL,

Arbitrators.

JOHN RICORD, Esq.,

H. H. M.'s Attorney General.

No. 5.

DEPARTMENT OF LAW, }  
Honolulu, 6th April, 1847. }

**GENTLEMEN:** I truly sympathize with you in the delays which have arisen at the instance and on the part of Messrs. Ladd & Co. in your proceedings as arbitrators, under the compact of 13th July, 1846.—These delays have however wholly originated with the plaintiffs themselves, who obtained the postponement of your proceedings to make efforts at compromise, which, they having resigned to their creditors, are still under deliberation. I trust I shall be able dispassionately to answer a pending project of their creditors, on Friday next, the 9th inst.

But I am not to be understood by this as asking any delay in the arbitration. I am no less anxious than yourselves to enter upon it at the place in our inquiries where the arbitration adjourned. Yet His Majesty, having graciously opened a door for the relief of Ladd & Co.'s creditors, who are not parties to the compact, either directly or indirectly; and Ladd & Co. having, by letting in their creditors to negotiate, acquiesced in His Majesty's views expressed in certain resolutions, passed by the Privy Council on the 18th of January last, copy of which I have the honor to enclose, I still deem it my duty to reply to that project, since it was made on behalf of those creditors, by a committee of their number, Messrs. James F. B. Marshall, William Paty and Robert W. Wood, through the mediation of Jules Dudoit, Esquire, Consul of France. For this purpose however, much previous consideration has been found necessary in order to ensure His Majesty's assent to the views I am about to present them.

The defendant has no power to release you, Gentlemen, from the high trust you have had conferred upon you by the compact. This the plaintiffs alone can do, by the discontinuance of their demands; or should they, being summoned by you, decline to proceed, it seems to me, that you have the clear right to award a non-suit or a *non-pros.*, not solely for the want of merits in their cause, but because they decline or refuse or delay to prosecute it before you with due diligence.

I have the honor to be, your obedient servant,

JOHN RICORD, Attorney General.

Messrs. STEPHEN H. WILLIAMS, JAS. F. B. MARSHALL,  
Arbitrators, &c., &c.

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[ENCLOSURE TO NO. 5.]

TRANSLATION OF RESOLUTIONS,

*Unanimously passed by the King and Privy Council, on the 18th of January, 1847, after discussion in two Privy Councils.*

1. Resolved, That the mediation of Jules Dudoit, Esq., Consul

of France, with a view to settle in an amicable way, all existing differences between Messrs. Ladd & Co. and the King's Government, is highly honorable to him, and agreeable to this Government.

2. Resolved, That the Hawaiian Government cannot agree to receive from Messrs. Ladd & Co. a transfer of the properties, privileges, &c., for several cogent reasons, among which is this, that Ladd & Co. in the most solemn manner have declared, that they had alienated the same to a company of capitalists in Brussels, on the 17th of May, 1843, nor by charter to construct a joint stock company thereon; the more especially after having taken effectual measures, by reference to the parties abroad, to ascertain the exact truth of what Messrs. Ladd & Co. have so solemnly declared.

3. Resolved, That the Attorney General is hereby instructed to communicate these resolutions, in the most courteous manner, to the Consul of France, and respectfully to invite him to make other proposals, upon the following clear principles.

First. The creditors of Messrs. Ladd & Co. to agree to receive, at their own risk, and direct from them, whatever properties and privileges Messrs. Ladd & Co. can convey to them, and in consideration thereof, to forever discharge Messrs. Ladd & Co. from all their obligations.

Second. The creditors themselves to create a joint stock Company on the basis of the properties, &c., so conveyed by Messrs. Ladd & Co., under such management and by-laws as the creditors may establish among themselves.

Third. The Government to have no interest or participation whatever in the Company, but to protect it as a purely private enterprise, so far as the laws and foreign treaties will permit, the Company assuming the debt of Messrs. Ladd & Co. to the Treasury, at a time, and on terms to be mutually agreed upon.

4. Resolved, That any compromise to take effect must have previously passed before and received the sanction of the King and Council.

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## No. 6.

HONOLULU, May 13, 1847.

GENTLEMEN:—

When we entered into the compact with the Hawaiian Government, under which the differences between us and the Government were submitted to your examination and determination, we had every assurance suited to inspire us with confidence that the sole object contemplated by both parties, was to ascertain on fair and honest principles, what were truth and justice in the case. It was

understood by us, and asserted by Mr. Ricord, who was appointed to represent the Government, that this case of settlement was to be the first to illustrate the disposition to settle amicably all differences between American citizens and this Government, which had been professed on the part of the Government, and accepted by the United States Commissioner and Commodore Stockton, previous to the departure of the frigate Congress.

You have been made too painfully familiar with the converse of such dispositions, as manifested on the part of the late Attorney General, throughout almost all of the investigations which have been had before you.

But notwithstanding the needless and vexatious obstacles which were constantly thrown in the way of our endeavors to elicit facts in elucidation of our claims, and the intimidating prospects that were always thrown up of a ruinous procrastination of a decision in the case for several years, and the extravagant expenses created for the avowed purpose of rendering the prosecution of the arbitration intolerable to us, yet we were determined to persevere to the last limit to which our pecuniary means and the forbearance of an impatient minority of our creditors would allow.

The suspension of the proceedings before you, since the 18th of January last, was occasioned, as you are well aware, by the intervention of Mr. Dudoit, the French Consul, who seemed to have the greatest confidence in the practicability of effecting a compromise that should be satisfactory to ourselves and our creditors, honorable to the Government and beneficial to the country. He seems to have been deluded along, from week to week, with the general assurance of the Government, of the most favorable intentions on their part, to grant to us and our creditors, valuable facilities for operating on our properties, so as to make them worth more to us and our creditors, than they would be in the hands of the Government, and so productive as to be a safe and profitable investment, of at least the amount of money that we owed.

You, Gentlemen, have been our witnesses, of our cordial and vigorous co-operation to effect any arrangement that should be acceptable to our creditors, and without embarrassment to the Government; and you have also witnessed the disappointments that have cruelly mocked all the confidence which has been placed in the professions of justice or liberality, that have never been brought to terminate upon any tangible reality.

We need not recapitulate what numerous proposals, acknowledged throughout the community to have been most magnanimous, honest and disinterested, have been made by the great majority in interest of our creditors to all the others, including the Government, whom they have offered to pay down and in full. All these overtures have been defeated principally by a single creditor, whose claims have grown

into existence within a few months, and who is himself a leading member of the Government.

Within the present month he has brought his private claims before the courts, and there obtained judgments against us, in execution of which he has levied attachments upon every item of our property, even entering our houses and lodgings, and siezing upon every article of our furniture and private effects of even the most trifling value.— He has pushed his private claims to the most severe extremities, even to the danger of life, and no sacrifice seems to have deserved the smallest consideration with him in comparison with the great object of his aim, to get rid of the contracts into which the Government have entered with us. He has firmly determined that he will listen to no further terms of arrangement which shall contemplate the surrender to the use of our creditors of a wharf lot, leased to us on the 21st of February, 1843, on which we are forced by a judgment of court to pay rents for the two years past, although we have never been able to obtain possession, and which he now, to the surprise of every body claims to be his private property. He is positive and fixed in his purpose to alienate by public sale, the titles which we have to any fixed property in the country, unless we will surrender to him unconditionally, the contracts we have with the Government, and which the Government have in vain endeavored to prevail upon the creditors to consent to surrender.

We are now reduced to a perfect destitution of the means to meet the expenses of prosecuting the arbitration farther, especially as you have intimated to us that the exorbitant charges of about \$90 per sitting for stenographic notes of proceedings have exhausted the funds to the amount of \$1000, which we had provided in the outset, as one half proportion of the greatest estimated expense of the arbitration, and that you would require of us, on reopening the arbitration, to make a further provision in advance.

We consider the late proceedings on the part of the leading member of the administration as tantamount to a violation of the compact of July 13, 1846, which by implication should have shielded our property from sacrifice and alienation; and we design, for ourselves and our assigns, to hold the Hawaiian Government responsible for the infraction which they have permitted to be committed. And we consider these proceedings also, as the consummation of the purpose of the Government, pursued from the first, to drive us from the prosecution of our rights, by depriving us of our last means of defraying expenses which have in every possible way been aggravated.

In view therefore of the insurmountable obstacles which are thus thrown in the way of our proceeding, and in view of our want of the next dollar you would require, and, more than all, in view of the sacrifices and waste of property which may be rendered valuable to our creditors, and which can best be protected by them, we have deter-



mined to withdraw ourselves and our claims from the arbitration, and to assign to individuals of our creditors, for the common benefit of all, all our properties and effects of every kind and description.

We therefore take this opportunity and mode to inform you that it will be impossible for us to avail ourselves farther of your disinterested services as arbitrators to aid us in the adjustment of our affairs with the government, and so far as we are concerned, we release you from the engagements you have taken in the matter.

We cannot express our sense of obligation, for the good offices you have bestowed upon us and our affairs; nor have we any means—they do not exist—of compensating you for the offensive annoyances originated by the Attorney General, to which you have been forced to expose yourselves in the progress of your arduous labors.

With every sentiment of respect, we remain ever, gentlemen,

Your obliged and obedient servants,

P. A. BRINSMADE,  
WILLIAM LADD,  
WM. HOOPER.

Messrs. STEPHEN H. WILLIAMS, JAS. F. B. MARSHALL,  
Arbitrators, &c., &c.

#### No. 7.

HONOLULU, May 17, 1847.

SIR,—We have to inform you that Messrs. Ladd & Co., Plaintiff's before the arbitration under the Compact of July 13, 1846, have notified us of their formal withdrawal from said arbitration.

We therefore consider ourselves released by such withdrawal from further duties or responsibilities as arbitrators under said Compact, and shall at our earliest convenience be prepared to account with the parties for the expenses incurred by said arbitration, and also to deliver up to the respective parties, the documents, &c., now in our possession, belonging to them.

We are Sir, your obedient servants,

STEPHEN H. WILLIAMS,  
JAS. F. B. MARSHALL,

Arbitrators.

JOHN RICORD, Esq.,

Late H. H. M.'s Attorney General, &c., &c.

#### No. 8.

HONOLULU, 17th May, 1847.

GENTLEMEN,—I have just had the honor to receive your notice

of the formal withdrawal by Ladd & Co. of their claims and demands under the Compact of submission 13th of July, 1846.

You will please to observe by reference to the Polynesian newspaper of the 8th instant, that on that day my functions as His Majesty's Attorney General, ceased by operation of law. I am unable therefore to take any official action upon the announcement contained in your note; but have transmitted it to His Majesty for consideration in Privy Council, which will take place this afternoon at 3 o'clock. You will be made duly acquainted with what may result.

I have the honor to be, gentlemen,

Your obedient servant,

JOHN RICORD, Attorney General.

Messrs. STEPHEN H. WILLIAMS, JAS. F. B. MARSHALL,  
Arbitrators, &c., &c.

No. 9.

HONOLULU, 17th May, 1847.

GENTLEMEN,—I have the honor to inform you, that by a resolution of His Majesty in Privy Council, passed at 4 o'clock, P. M. this day, I am authorized to perform any duties which may be required by the withdrawal of Messrs. Ladd & Co. from the arbitration, under the Compact of the 13th July, 1846.

Whenever it may suit your convenience, I shall be happy to attend to business.

Your obedient servant,

G. P. JUDD.

Messrs. S. H. WILLIAMS, J. F. B. MARSHALL,  
Arbitrators, &c., &c.

No. 10.

HONOLULU, 19th May, 1847.

GENTLEMEN,—Your notice to H. M.'s late Attorney General having been laid before the King in Privy Council, I am authorized to obtain if possible from you a copy of the document by which Ladd & Co. have withdrawn from the arbitration under the Compact of 13th July, 1846.

If consistent with your views of your duty, I shall be happy to receive the above mentioned copy as early as possible.

Your obedient servant,

G. P. JUDD,

Attorney for the King and Government.

Messrs. S. H. WILLIAMS, J. F. B. MARSHALL,  
Arbitrators, &c., &c.

## No. 11.

On the receipt of Mr. Judd's letter, the parties to the arbitration were requested to meet at Mr. Marshall's office at 12 o'clock, May 19th. Messrs. Ladd & Co.'s letter of withdrawal was then read.

Mr. Judd stated that he was taken by surprise by the letter in question, and requested permission to reply to it in the form of a protest, and have his reply recorded among the minutes of the arbitration.

The arbitrators then stated that they would make up the accounts of the expenses, &c., of the arbitration, as soon as the bill of Mr. Hopkins—which was disputed by them—was settled. They agreed with Mr. Hopkins to leave the matter in dispute to the arbitration of Mr. Judd, which was done; after which, all the documents that had been filed before the arbitrators during the progress of the submission, were returned to the respective parties in presence of each other, and then the meeting was dissolved.

## No. 12.

## PROTEST.

Whereas, Peter A. Brinsmade, William Ladd and William Hooper, commonly known as the firm of Ladd & Co., on the one part, and the King and Government of the Hawaiian Islands of the other part, did on the 13th day of July, A. D. 1846, enter into a solemn compact or treaty, binding themselves to refer all demands and matters of difference therein existing between said parties, to the arbitration of Messrs. Stephen H. Williams and James F. B. Marshall, Esqs., and in case of their disagreement, to an umpire named in said compact, and further binding themselves to abide by the award and decision of said arbitrators or umpire;

And whereas the said Ladd & Co., after prosecuting their claims for a period of five months, i. e. until the 18th December, 1846, did then cease to proceed with said arbitration, and have hitherto declined to proceed, although often requested to delay no longer;

And whereas the said King and Government have never caused any delays on their part, but have ever held themselves willing and ready to proceed with said arbitration;

And whereas the said Ladd & Co., notwithstanding the said King and Government, placing the utmost reliance in the justice of their cause, have by consenting to the selection of the arbitrators aforesaid from among the fellow citizens and creditors of the said Ladd & Co., to the exclusion of the subjects of His Majesty aforesaid, evinced a willingness to give the said Ladd & Co. every advantage they could desire, have now, upon the flimsy pretence that want of money prevents them from proceeding in said arbitration, although

sufficient money has been offered them for this purpose on condition of a guarantee being given that such money would be refunded in case of a failure to make good their claims, capriciously withdrawn from the said arbitration without any just cause or reason;

And whereas, the said King and Government have been notified by the said arbitrators, under date of May the 17th, 1847, of said withdrawal, and that they "consider themselves released by said withdrawal from further duties or responsibilities as arbitrators under the said compact."

**THEREFORE BE IT KNOWN UNTO ALL PERSONS,** that we the King and Government of the Hawaiian Islands, do solemnly protest against such withdrawal, as being a direct violation of the true spirit and intention of said compact,—said compact being no less than a solemn treaty made and entered into by the said King and Government and the said Ladd & Co., with the sanction of the Representative of the United States, to refer all matters of difference to the decision and award of said arbitrators or umpires, and to them alone.

And we do further protest against said withdrawal as a step calculated greatly to injure the said King and Government, by spreading before the world, the testimony of only one party, and depriving the other of being heard in its just and righteous defence.

And we do further protest against said withdrawal as a step involving the King and Government in great and needless expense, and calculated to render them liable to great damages for which they can receive no equivalent in return, and for which they have no security, it being well known that the said Ladd & Co. have for a long time been bankrupt.

**AND BE IT FURTHER KNOWN UNTO ALL PERSONS,** That we the King and Government of the Hawaiian Islands, do consider said withdrawal as of right we ought, an entire relinquishment and abandonment of all claims and demands of whatsoever kind and nature the said Ladd & Co. may have pretended to have against said King and Government, it being the true intention of the parties to the compact aforementioned, that all claims of both the respective parties should be settled by Messrs. S. H. Williams and J. F. B. Marshall, Esqs. as arbitrators, and the umpire aforesaid, and by no other persons or persons.

And furthermore **BE IT KNOWN,** that we the King and Government aforesaid, not only consider the unfounded claims of said Ladd & Co. as forever abandoned, but we hold them responsible to us for all costs and expenses which we have incurred, by the prosecution aforesaid, and for all damages that have or may result from said prosecution or withdrawal.

His Majesty the King, and the Government of the Hawaiian Islands, by

**G. P. JUDD,**

Their duly empowered Attorney.

Honolulu, May 20, 1847.

and Government of the Hawaiian Islands and Messrs. Ladd & Co., (parties to the arbitration formed under compact of July 13th, 1846) in account current with Stephen H. Williams and James F. B. Marshall, arbiters chosen under the aforesaid Compact.

			Cr.
1846.			
Nov. 27.	To cash paid C. Brewer & Co.'s Bill, Stationery, &c., as per voucher No. 1,	19 87	\$1,000 00
" 30.	" cash paid James Easton's Bill,		500 00
1847.	" Clerking, as per voucher No. 2,	36 00	
Sept. 3.	" cash paid Matthew Page's Bill,	10 00	
Oct. 27.	" Stenography, as per voucher No. 3,		
" 30.	" cash paid Henry Tufts' Bill,	75 00	
Nov. 27.	" Clerking, one month, as per voucher No. 4,		
" 30.	" cash paid Charles G. Hopkins' Bill,	281 25	
" 30.	" Stenography, as per voucher No. 5,		
Feb. 18.	" cash paid J. W. Hayward's Bill,	15 00	
" 20.	" Attendance, &c., as per voucher No. 6,		
" 20.	" cash paid S. C. Damon's Bill,	15	
May 20.	" Rent, &c., as per voucher No. 7,		
" 20.	" cash paid Charles G. Hopkins' Bill,	694 50	
Feb. 25.	" Stenography, as per voucher No. 8,		
" 25.	" cash paid Judge Andrews' Bill,	98 00	
May 21.	" Court Fees, &c., as per voucher No. 9,		
" 21.	" Our services as arbitrators, under the Compact, as per voucher No. 10,	700 00	
" 27.	" cash paid J. B. DeFennes' Bill,		
" 27.	" Room rent, as per voucher No. 11,	20 00	
" 27.	" cash paid to G. P. Judd, Att'y for King and Gov't their one half bal. due on this acct, voucher No. 12,	17 69	
" 27.	" cash paid Marshal Sea, levied on by him, being Ladd & Co.'s one half said bal, voucher No. 13,	17 69	
		\$2,000 00	\$2,000 00

E. & O. Ex.

Honolulu, May 27th, 1847.

STEPHEN H. WILLIAMS,  
JAMES F. B. MARSHALL.

## No. 14.

HONOLULU, May 27, 1847.

SIR,—Enclosed please find an account current of this date of the expenses of the arbitration between the King and Government and Messrs. Ladd & Co., with authenticated copies of the vouchers for the same, Nos. 1 to 13.

Please to acknowledge receipt of the same, and oblige

Your obedient servants,

S. H. WILLIAMS,  
J. F. B. MARSHALL.

HON. G. P. JUDD,

Attorney for the King and Government, &c., &c.

## No. 15.

HONOLULU, May 27, 1847.

GENTLEMEN,—Enclosed please find our account current of this date of the expenses of the arbitration between the King and Government and yourselves, with the vouchers accompanying, Nos. 1 to 13.

Please acknowledge receipt of the same, and oblige

Your obedient servants,

S. H. WILLIAMS,  
J. F. B. MARSHALL.

MESSRS. PETER A. BRINSMADE,  
WILLIAM LADD and  
WILLIAM HOOPER.

## No. 16.

HONOLULU, May 29th, 1847.

DEAR SIRs,—We have to acknowledge your note of the 27th instant, enclosing account current and vouchers for the expenses disbursed by you for the arbitration between the King and Government of the Hawaiian Islands and ourselves, which we find to be correct.

The amount which we noticed charged for your services is in our judgment a trifling compensation for your time and anxieties; but that is the least consideration for which we are left indebted to you. for the favor we have had in your attention, fidelity and impartiality. Accept therefore the only tribute we have to offer in the full-hearted

sincerity with which we say we thank you, Gentlemen, and remain,  
always and everywhere,

Your obliged and obedient servants,

P. A. BRINSMADE,  
WILLIAM LADD,  
WM. HOOPER.

Messrs. S. H. WILLIAMS,  
J. F. B. MARSHALL,

No. 17.

TREASURY OFFICE, }  
Honolulu, May 29th, 1847. }

GENTLEMEN,—I have the honor to acknowledge yours of the 27th instant, enclosing an account current of the expenses of the arbitration amicably entered into for the adjustment of the claims of Messrs. Ladd & Co. on the King and Government of the Hawaiian Islands, together with copies of your vouchers, which I find to be correct.

In addressing you this final communication on behalf of the King and Government, I take occasion to express to you their great satisfaction with your prudence, good sense and patience, while acting as arbitrators up to the period when Messrs. Ladd & Co. abandoned all pretensions they had set up under the compact of 13th July, and their full confidence that if you had been allowed to proceed, the evidence would have enabled you to render a final award which should forever exonerate His Majesty's Government from every charge brought forward by Messrs. Ladd & Co. This they regret and have protested against, holding themselves to be absolved from all further reclamations on the part of Messrs. Ladd & Co. for the same causes for which your arbitration was instituted, the particulars of which were filed on the 8th of August last.

There can now be no impropriety in acquainting you with the fact that the King and Government were fully prepared to show that Messrs. Ladd & Co. were bankrupt long before their failure; that they have never received the least injury at the hand of the Government or any of its officers; that their failure is solely to be attributed to themselves; that both Mr. Hooper and Mr. Ladd, previous to the failure of the house in 1844, had abandoned all confidence in Mr. Brinsmade's success in Europe, and had written to him to return and bring with him the contract of 1841 before it should expire by limitation; that the rupture of Mr. Brinsmade's plans in Belgium took place before the failure of the house in Honolulu; that his plans were visionary to be entitled to succeed among prudent men; if the King and Government, in consent

enlighten His Excellency the President of the United States, to whom His Majesty had reason to apprehend, erroneous and prejudicial representations had been made of this and other cases of alleged grievance towards citizens of the United States resident in his dominions.

In my opinion the testimony adduced by Messrs. Ladd & Co. themselves as plaintiffs, in the view of impartial minds, must clear the Government of every charge: nevertheless, the Government greatly regret that the proceedings were cut short before evidence on their part had been heard, and before a definite judgment had been pronounced by you.

It affords me great pleasure Gentlemen, to tender you the thanks of the King and Government for the services you have rendered them as arbitrators.

I have the honor to be,

Your obedient servant,

G. P. JUDD,

Attorney for the King and Government.

Messrs. S. H. WILLIAMS,

J. F. B. MARSHALL.

## ERRATA.

Page 104, 19 lines from top, for "his" read "her."

" 126, 2 lines from top, for "Grand Peirre" read "Mr. Grand Pierre."

" 208, 3d Section, for "not clearly" read "clearly."

" 256, top line, for "aver" read "cover."

" 458, 6 lines from bottom, for "trumperies" read "time-keepers."

" 500, 18 " " top, for "carry it" read "carry it on."

" 518, 17 " " bottom, for "Mr. Wm. Lacy" read "Mr. Wm. Ladd."

" 520, 15 " " for "Mr. K." read "Mr. R."

" 523, 2 " " top, instead of "I as agent of Messrs. Carey & Co." read "I urged Mr. Hooper, who appeared to be the agent of Carey & Co. to accede to it."

Appendix, page 14, the following is endorsed on the deed in the native language, "Ke ae aku nei maua i keia hoolilo aiaa. KAMEHAMEHA III., KEKAULUONI."



# APPENDIX.

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## DOCUMENTARY EVIDENCE FILED BY THE PARTIES.

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### A

#### THE BELGIAN CONTRACT FILED BY LADD & CO.

Before me Edward Egide, Joseph Evenepoel, Royal Notary, residing at Brussels, the Metropolis of the Kingdom of Belgium, and in the presence of the witnesses to be named hereafter.

Were present—Mister Timothy Haalili, Private Secretary of the King of the Sandwich Islands, Kamehameha III., and Member of the House of Nobles, residing at Honolulu, Island of Oahu, (Sandwich) acting in the name of the said King, and making him responsible,

And Mister William Richards, residing at Lahaina, Island of Maui, (Sandwich) Interpreter to the Government, intrusted with full powers from the said Kamehameha III., as shown by the powers of Attorney, dated April the eighth, one thousand eight hundred and forty-two, translated and registered at Brussels, on the eleventh day of May, in the year one thousand eight hundred and forty-three, book the forty-eighth, folio the second recto, case the second, the duty of two francs twenty-one centimes, (the additional ones included) having been paid without any marginal note. The receiver (signed) Barrê, the said power of Attorney being joined, for deposit, with the original document, to the presents, after having been certified to be true, of the first part. Mister Peter Allan Brinsmade, merchant, residing at Honolulu, Island of Oahu, (Sandwich) acting not only for himself, but also for, and in the name of his co-partners, Messrs. William Ladd and William Hooper, merchants, citizens of the United States, now residing at the said Honolulu, as shown by power of Attorney, dated December the second, one thousand eight hundred and forty-one, translated and registered at Brussels, on the thirteenth day of May, one thousand eight hundred and forty-three, book the forty-eighth, folio the third, verso case the second, received two francs, twenty-one centimes (the additional ones included) without any marginal note, the receiver (Signed) Barrê, the power of Attorney, being joined for deposit, with

the original document, to the presents, after having been certified to be true, of the second part.

Mister Joseph Vanderburghen de Binckum, member of the Permanent deputation of the Province of Brabant, residing at Lubeck, member and Secretary of the Committee of Directors of the Belgian Company of Colonization, acting not only for himself, but also for and in the name of Mister Theophilus Antony William, Count of Hompesch, Proprietor, residing at Saint Josse ten, Noode, President of said Committee, as shown by the power of Attorney, under private signature, dated Brussels, the fifteenth instant, registered in the same town on the sixteenth day of May, one thousand eight hundred and forty-three, book the forty-eighth, folio the fourth, verso case the sixth, received two francs, twenty-one centimes, the additional ones included, (one marginal note,) the receiver, (signed) Barre. Which document shall remain annexed, for deposit, unto these presents, after having been certified to be true.

And Mister Louis Henry Charles Obert, formerly a merchant, residing at Brussels, General Agent of the said Company, all three representing the said Company, under reserve of the ratification of the Council General, of the third part. Which parties have said and declared to me, that what follows, has been agreed between them for the purpose of aiding the advancement of civilization in the Sandwich Islands, by encouraging their agriculture, manufactures, and commerce, and by developing the commercial relations of Belgium.

#### CHAPTER THE FIRST.

*Article the first.* The said party of the first part, agrees to concede and by this present instrument, has conceded unto Messieurs le Comte de Hompesch, Chevalier Vanderburghen de Binckum and Obert, representing the Belgian Company of Colonization, the rights and privileges following, namely:

*First.* The right to import free of importation duty into the Archipelago of the Sandwich Islands, all such tools, machines, engines, instruments and other articles, as are or may be necessary for the agricultural, mechanical and manufacturing operations, undertaken in conformity with the stipulations of this convention.

*Second.* The right of exporting, free of exportation duty, all articles produced or manufactured under the auspices of the said company.

*Third.* The right to enjoy, as the commerce of the Sandwich Islands shall require, one, or more, free entrepots for receiving merchandise from every source and of every kind, for re-exportation, free of duty, or for consumption in the country, (excepting in this last case merchandise prohibited) having previously paid the duties imposed by the revenue laws. The manner in which merchandise in entropot shall be bonded, shall be agreed upon by the parties, the company agreeing beforehand, to submit to the rules applicable to similar cases, in force in Great Britain.

*Fourth.* The right to enjoy all the rights and privileges which the commerce of the Sandwich Islands does or may enjoy; and all the rights and privileges present and future, attached to the commercial flag of the Sandwich Islands, shall be conferred on the commercial Flag of the Belgian Company of Colonization.

*Article the second.* The said party of the first part approves and ratifies the transfer made to the said Company by the said Brinsmade and his co-partners, of all the rights and privileges which have been accorded to them previous to the date of this instrument, by the Government of the Sandwich Islands, and declares that the term of five years allowed in the contract of November the twenty-fourth, one thousand eight hundred and forty-one, translated and registered at Brussels, on the eleventh day of May, in the year one thousand eight hundred and forty-three, book the forty-eighth, folio the second, recto case the sixth, received two francs, twenty-one centimes, the additional ones included, two rolls, two marginal notes, the receiver, (signed) Barre, for the occupation of mill sites and lands, shall be extended to twenty-five years. There is, however, reserved to the Government of the Sandwich Islands, the right to make appropriations of lands, for the support of schools, and for other objects of public utility, and to encourage private individual enterprises on such a scale, and in such a manner, as shall not interfere with the great objects of the community hereafter mentioned, and the said party of the first part, further agrees that all lands granted in said contract which shall be taken up and improved directly by the community hereafter mentioned, shall be free and not liable to the payment of half a dollar per acre, (two francs and sixty-six centimes, for forty ares forty-six centiares,) as stated in said contract.

*Article the third.* The said party of the first part, authorizes the said Company to introduce into the Sandwich Islands, persons of various vocations, of whom the Government of the said Islands shall determine the number and quality; and to each person thus introduced, he will convey in full property, lands from those embraced in the contract aforesaid, with Messrs. Ladd and Company, of November the twenty-fourth, one thousand eight hundred and forty-one, registered as aforesaid, to the amount of twenty hectares. He further agrees to accord to all such persons thus introduced, all the rights, privileges and immunities, both civil and political, which are allowed to native born subjects; these grants and privileges to be conferred on the condition of their naturalization, according to the established usages of European nations.

*Article the fourth.* The said party of the first part, further agrees to guarantee, during the course of six years, a minimum of four per cent. interest on the amounts paid on the first series of shares, as hereafter agreed to be omitted, which guarantee shall be assured by a mortgage upon the revenues of the country, and the Belgian Consul shall be authorized to receive from those revenues, the sum of money necessary to complete the payment of the four per cent. interest, when the nett profits of the operations of the community hereafter mentioned, shall not amount to four per cent. This guarantee shall cease before the expiration of six years, if, by a decision of the Council General of the Belgian Company of Colonization, a second series of shares shall be emitted before that period.

*Article the fifth.* The said party of the first part accords, and by these presents, has accorded to the said Belgian Company of Colonization, the exclusive rights to issue bonds to bearer under such con.

ditions of controls as shall be adopted in common accord by the Government of the Sandwich Islands and the said Company. These bonds can never be emitted to an amount greater than two thirds the value of the merchandise, and cash in the stores, the entrepôts, and coffers of the community, hereafter mentioned. If the wants of the community should require it, the Company shall have the power with the common accord of the Government of the Sandwich Islands, and with its authorization, to provide for it, either by the foundation of a bank or by other means which shall be judged useful to that effect.

*Article the sixth.* The said party of the first part further agrees that the concession, rights and privileges aforesaid, accorded to the Belgian Company of Colonization, for the purposes, and on conditions hereafter stated, shall not be accorded to any other persons or corporate body, during the duration of the community hereafter mentioned.

#### CHAPTER THE SECOND.

*Article the seventh.* The said party of the second part, agrees to cede and transfer, and by this instrument, has ceded and transferred to the said party of the third part, all the properties, manufactures, furniture, fixtures, mills, plantations, storehouses, buildings, business operations and facilities, (including the exclusive privilege of cutting stones for building in the Island of Oahu) possessed by the said party of the second part, as they are described more particularly in the statements, the translation of which are hereunto annexed and registered by Mister Barré, at Brussels, after having been translated, namely:

The documents of the fourteenth of March, one thousand eight hundred and thirty-five, book the forty-eighth, on the eleventh of May, one thousand eight hundred and forty-three, book the forty-eighth, folio the second, recto case the third, with the duty of two francs, twenty-one centimes, the additional ones included (one marginal note).

The document of the twenty-ninth of July, one thousand eight hundred and thirty-five, on the thirteenth of May, one thousand eight hundred and forty-three, book the forty-eighth, folio the third verso, case the first, with the duty of two francs, twenty-one centimes, the additional ones included, without any marginal note.

The memorandum marked K, and dated, registered on the thirteenth of May, one thousand eight hundred and forty-three, book the forty-eighth, folio the third verso, case the third, with the duty of two francs, and twenty-one centimes, the additional ones included, without any marginal note.

The document of the twenty-seventh of July, one thousand eight hundred and thirty-nine, on the thirteenth of May, one thousand eight hundred and forty-three, folio the third verso, case the fourth, with the duty of two francs, twenty-one centimes, the additional ones included, without any marginal notes. Another document of the twenty-seventh of July, one thousand eight hundred and thirty-nine, registered on the eleventh of May, one thousand eight hundred and forty-three, book the forty-eighth, folio the second verso, case the seventh, with the duty of two francs, twenty-one centimes, the additional ones included, without any marginal note.

The document of the fourteenth of June, one thousand eight hundred

dred and thirty-nine, registered on the 13th of May, one thousand eight hundred and forty-three, book the forty eighth, folio the third recto, case the third, with the duty of six francs, sixty-two centimes, the additional ones included, without any marginal note. The document of the same date as the last registered on the thirteenth of May, one thousand eight hundred and forty-three, book the forty-eighth, folio the third verso, case the fifth, with the duty of two francs, twenty-one centimes, the additional ones included, without any marginal note.

The document of the twenty-third of June, one thousand eight hundred and forty-one, registered on the eleventh of May, one thousand eight hundred and forty-three, book the forty-eighth, folio the ninth verso, case the fourth, with the duty of six francs, sixty-two centimes, the additional ones included, (one marginal note.)

And the document of the twenty-fourth of November, one thousand eight hundred and forty-one, registered on the eleventh of May, one thousand eight hundred and forty-three, book the forty-eighth, folio the second recto, case the sixth, with the duty of two francs, twenty-one centimes, the additional ones included, two rolls, two marginal notes, and furthermore the said party of the second part declares the said properties to be free from all charges and incumbrances. In this cession and transfer, are comprised the properties, rights and privileges, obtained by the said party of the second part, from the Government of the Sandwich Islands, to this date, as well as the various interests which they have in the different agricultural, manufacturing and commercial operations in the said Islands.

#### CHAPTER THIRD.

*Article the eighth.* These concessions and conveyances are made both by the said party of the first part, and of the said party of the second part, on these express conditions, namely:

The said party of the third part, agrees that the Belgian Company of Colonization shall found, or cause to be founded, a community for the prosecution of agriculture, manufactures and commerce, at the Sandwich Islands.

This community shall be composed of,

1. The King and Government of the Sandwich Islands.
2. The Belgian Company of Colonization.
3. The laborers and employees.
4. The Stockholders.

The community shall commence its operations, as soon as the first series of shares, as fixed by article the thirteenth, shall be disposed of, and its duration shall be ninety years.

*Article the ninth.* The principal object of this community shall be to develop as promptly as possible, the civilization and resources of the Sandwich Islands, by creating agricultural, manufacturing and commercial establishments, and by instituting commercial relations between these Islands and Belgium.

*Article the tenth.* The title and name of this community, shall be the Royal Community of the Sandwich Islands.

*Article the eleventh.* The community shall be placed in Belgium, under the patronage and high administration of the Belgian Company of

Colonization, and at the Sandwich Islands, under the patronage and protection of the King of these Islands. The principal seat of the community shall be at Brussels, and its principal agency shall be at Honolulu.

*Article the twelfth.* The Belgian Company of Colonization agrees to convey and transfer to the said Royal Community of the Sandwich Islands all the concessions, privileges, properties, mills, manufactories, plantations and rights of every name and nature, without exception or reserve, which by these presents, are in any way conceded, or conveyed to the said Belgian Company of Colonization, by the said party of the first and second parts, as herein before described.

*Article the thirteenth.* To raise the capital necessary to carry into effect the objects of this community, a subscription shall be opened by the Belgian Company of Colonization. This subscription shall be divided into as many series of shares as the operations of the community may require, which shall be determined by the Council General of the said Company, acting under advices from the Board of Administration at the Islands, hereafter mentioned. The first series is fixed at four thousand shares. The price of each share shall be one thousand francs, which shall be paid in the manner following, namely:

Twenty per cent. at the date when the subscription shall be opened, twenty per cent. at six months after the same date, twelve per cent. at twelve months after the same date.

Eleven per cent. at eighteen months after the same date. The remainder shall be paid upon the decision of the Council General of the Belgian Company of Colonization, in accordance with special propositions from the Board of Administration authorized by the King and Government of the Sandwich Islands.

*Article the fourteenth.* The amount of the price of subscription shall be employed to the profit of the community, either in the prosecution of agricultural, manufacturing and commercial operations at the Islands, or as required, when the Council General shall judge useful to the interests of the community for the purchase of shares of the community.

*Article the fifteenth.* No new emission can take place after the first series, but upon a decision of the Council General, based upon the requisition of the Board of Administration, hereafter mentioned, and after the full payment of the first series.

*Article the sixteenth.* The value of the cession made by these presents by the said party of the second part is estimated and fixed at the sum of one million and sixty-seven thousand francs, for which sum the said party of the second part shall receive one thousand and sixty-seven shares.

Two hundred and fifty of these shares shall be held in reserve by the community and deposited in its coffers for five years, for the said party of the second part.

In the case of the emission of a second series before the expiration of five years, the shares deposited shall be restored to the said party of the second part at the epoch of the emission.

The interests and dividends appropriated to these shares so deposited shall belong to the said party of the second part, and shall be paid

to them, during the period of deposit, in the same manner and title as other holders of shares.

**Article the seventeenth.** In consideration of the concessions and privileges granted by the Government of the Sandwich Islands, and in consideration of the service rendered by the Belgian Company of Colonization, and also, in consideration of certain obligations of said Company, to be stated hereafter, there shall be created five hundred titles of property, divisible into ten parts each, which shall not have the rights of any interests, but shall be entitled only to one half of all net proceeds exceeding five per cent. paid to the shareholders for interest. These titles shall also be entitled to one half of the avails of the divisible property of the community, at the time of its final dissolution, after the reimbursement of the capital. They shall be divided and owned as follows: two hundred of them shall belong to the King and Government of the Sandwich Islands, one hundred of which shall be forever, unalienable, the other hundred disposable at pleasure. Two hundred shall belong to the Belgian Company of Colonization, one hundred of which shall be forever, unalienable, and the income divided by the Company between their shareholders, and the other hundred shall be at the disposition of the committee of directors. The remaining one hundred titles shall be deposited in the coffers of the community, and equally unalienable, and their income shall be employed for the benefit of the laborers and employes mentioned in article the eighth.

**Article the eighteenth.** The royal community of the Sandwich Islands, although placed under the high direction of the Belgian Company of Colonization, in conformity with article the twentieth, of the statutes of said Company, nevertheless forms a distinct division, and is entirely separate in interests and administrations from the other establishments which may have been, or may be formed by said Company.

**Article the nineteenth.** The affairs of the community in Belgium, shall be managed by the committee of directors acting under the rules of the administration, and under the surveillance of the Council General of the Belgian Company of Colonization, and of, at least, one commissary of the Belgian Government, and one appointed by the King of the Sandwich Islands.

**Article the twentieth.** The affairs of the community at the Sandwich Islands shall be administered by a Board of Administration, consisting of a Director, a Secretary General and four Administrators, whose rules of order and administration, shall be formed by the Council General, and subject to the approval of the King of the Sandwich Islands.

**Article the twenty-first.** For the first time these are named:

For Director, William Richards, the Secretary General, as well as the Administrators, shall be appointed at a future period, in the manner stated in article the twenty-second, hereafter.

**Article the twenty-second.** The appointments hereafter shall be made in the following manner:

The Director and two Administrators, shall be appointed by the King of the Sandwich Islands, the Secretary General and two Administrators shall be appointed by the Belgian Company of Colonization.

**Article the twenty-third.** Each of the persons employed in the direction of the affairs of the community, either in Belgium, or at the Sand-

wich Islands, shall possess an interest in the community. The amount of such interests, and their attributes and duties shall be specified and defined in the rules of organization which shall be adopted by the common accord of the parties to this instrument, and in consonance with the statutes of the Belgian Company of Colonization.

*Article the twenty-fourth.* The expenses of administration at the Islands, shall be paid by a commission of five per cent. on all sales for account of the community, two and a half per cent. on all return proceeds, in produce or merchandise, at the cost of production or purchase, and one per cent. on the purchase of bills of exchange.

*Article the twenty-fifth.* The expenses of administration in Belgium, shall be paid by a commission of two and a half per cent. on all purchases in Europe, for the account of the community, five per cent. on all sales of return products or merchandise, and one half per cent. for collecting bills of exchange.

*Article the twenty-sixth.* On the thirty-first day of July, of each and every year, a balance sheet containing an exhibit of the affairs of the community at the Islands, shall be made out, by the care of the directors and addressed by the first subsequent conveyance to the seat of the community at Brussels. At the same epoch, the books of the community shall be closed at Brussels, and for the first time, both at Brussels and at Honolulu, on the thirty-first of July, one thousand eight hundred and forty four.

*Article the twenty-seventh.* Each year, on the reception at Brussels, of the balance sheet from the Sandwich Islands, the committee of directors shall immediately make out the general balance sheet, which shall be submitted for examination to the Council General of the Belgian Company of Colonization.

*Article the twenty-eighth.* The Council General acting under the inspection, and with the concurrence of the commissaries named in article the nineteenth, and of two commissioners appointed by the stockholders, shall, on the reception of the balance sheet aforesaid, determine the account of dividend, to be declared, of which notice shall be given to the stockholders, at least fifteen days previous to the payment of the dividend, which shall take place the first Monday in the month of May, of each year. No interest exceeding four per cent., or dividend of net profits, shall be paid to the stockholders, until after the King of the Sandwich Islands shall be reimbursed for the advances he may have made previously, by reason of his guarantee of interest, from the profits realized, exceeding four per cent. of interest.

*Article the twenty-ninth.* From the net profits resulting annually from the operations of the community, there shall be paid, First, an interest of five per cent. to the holders of shares, all exceptions being made for the stipulations of the last paragraph, of the preceding article. Second. There shall be deducted twenty per cent., to form a reserved fund to be employed, for the interests of the Royal Community of the Sandwich Islands, by the decision of the Council General. When this reserved fund shall have accumulated to the sum of one hundred thousand francs, the surplus shall be joined to the dividends and divided by the same rule and title.

*Article the thirtieth.* The deductions being made, the remaining net



ceeds shall be divided, under the care of the Council General, in the following manner: one half to the holders of shares, and one half to the holders of titles of property.

*Article the thirty-first.* In case of the dissolution of the community at the period indicated in this instrument, or previously, for some unforeseen reason, the final liquidation of its affairs shall be effected by three Commissioners, one of whom shall be appointed by the King of the Sandwich Islands, one by the Belgian Company of Colonization, one by the stock holders. These Commissioners shall proceed according to the common rights, and under the surveillance of the Commissioners mentioned in the nineteenth article of the present contract.

*Article the thirty-second.* The price of the concessions of the party of the second part fixed at one thousand and sixty-seven shares, two hundred and fifty of which shall remain deposited, as mentioned in the sixteenth, shall be paid to them in eight hundred and seven promises of shares, which shall be exchanged either for shares or for nominal value in cash, according to the will of the Belgian Company of Colonization, immediately after the Community has taken possession of the properties, privileges and grants which form the concessions.

*Article the thirty-third.* Until possession shall have been taken, as mentioned before, the party of the second part shall remain in the enjoyment of their said properties, grants and privileges, and shall have the right to annul the present contract, if, within twelve months after its date, the Belgian Company of Colonization shall not have sent a first ship to the Sandwich Islands.

These presents have intervened Messieurs. John Baptiste De Maes, Advocate, residing at Ixelles, and Charles John Francis de Le Cointe, formerly a War Commissioner, residing at St. Jasse Voode, who have declared that they know the parties of the first and second parts perfectly well, and have attested their identity, and being such as they have termed themselves hereabove. In faith of which, this instrument has been made and agreed at Brussels, in the office of the notary, street of the *Paroissiens*, on the seventeenth day of May, one thousand eight hundred and forty-three, in the presence of Messieurs. John Baptiste Dino and Paul Leflot, the former a proprietor of the second a tailor, residing both in the said town of Brussels, in the street *Notre Dame au Neiges*, the former number fifteen, the other number eight, witnesses required to that effect, and called in conformity with the laws; and the presents having been read not only in French, but also in English, the contracting as well as the intervening parties have signed with the said witnesses and me the notary.

(Signed,)

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HAALILIO,

WILLIAM RICHARDS,

P. A. BRINSMADE,

J. DE BINCKUM,

OBERT,

CHARLES LE COINTE,

J. B. DE FIENNES,

J. B. DINO,

P. LEFLOT,

E. E. J. EVENEPOEL, Notary.

En enregistré à Bruxelles le dix neuf mai, mil huit cent quarante trois. volume cent cinquante neuf, folio soixante dix Vo., case une, reçu pour 1e. association cinqs francs, neuf centimes, 2e. prorogation un franc soixante dix centimes; trente pour cent deux francs et quatre centimes, ensemble huit francs quatre vingt trois centimes, quinze rôles vingt deux renvois, le receveur (signé) Barré.

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### COPIE DES PIECES ANNEXEES.

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Le soussigné Monsieur Theophile Antoine Guillaume Comte De Hompesch, propriétaire, domicilié à Saint Tasse ten Noode, agissant en sa qualité de président de comite des directeurs, de la Compagnie Belge de Colonisation, déclare de commettre et de constituer Monsieur Joseph Chevalier Vandenberghe de Binckum propriétaire membre de la deputation permanente du Brabant, domicilié à Lubbeck.

A l'effet de le représenter dans le contrats relatifs à la communauté royale des Iles Sandwich, faire et accepter toutes concessions, toutes cessions et tous transferts, stipuler toutes charges et conditions établis tous intérêts et tous prélèvements, faire toutes déclarations, prendre tous engagements, faire toutes elections de domicile, passer et signer tous actes et contrats, et généralement faire tout ce qui requis et nécessaire, promettant et obligeant comme de droit.

Bon pour pouvoirs à Monsieur Vandenberghe de Binckum dans le contrats relatifs à la communauté royale des Iles Sandwich. Bruxelles le quinze Mai mil huit cent quarante trois (signé) Comte Hompesch. Certifié véritable (J. de Binckum était signé.)

Enregistré à Bruxelles le seize Mai mil huit cent quarante trois. volume quarante huit, folio quatre Vo., case six, reçu deux francs vingt centimes, additionnels compris, un renvoi. Le receveur (signé) Barré.

### *To all men unto whom these presents shall come, Greeting:*

Know ye, that I, William Ladd, and I, William Hooper, citizens of the United States of America, now residents at the Sandwich Islands, have made, constituted and appointed, and by these presents do make, constitute and appoint Peter Allan Brinsmade, resident at the Sandwich Islands, but now about to embark for the United States our true and lawful attorney, for us and in our name to lease, let, sell, devise, all our right, title and interest whatsoever in the following deeds, leases, contracts, bonds and obligations, more particularly described in the documents referred to,

To say:

All our right, title and interest in that piece of land in Honolulu granted to us by William S. Hinckley, as per his deed bearing date 1st March, 1835, and the two stone warehouses and other buildings thereon, and the wharf adjoining same. All our right and interest in that tract of land situated in Koloa, Island of Kauai, and known as Koloa

Plantation, as per lease of the King of these Islands and the Governor of Kauai, bearing date 29th July, 1835, and also all our right and interest in the buildings, stock, sugar works and water privileges connected with the same, described in part in a Memo. marked K. Also, all our interest in that part of said leased land now known as Mount Pleasant Plantation; and also, all the buildings, etc., connected with same, as per Memo. K.

All our right and interest in the contract made with the S. I. Government, as per instrument dated 27th July, 1839, for the water privileges at Waihohonui, Koloa; and also our interest in the sugar works recently constructed there as per Memo. K.

All our right and interest in the contract with Stetson & Co. for the cultivating of silk, per instrument dated 14th June, 1839.

All our right and interest in the contract with D. H. Goodale for the manufacture of oil, per instrument bearing date 3d June, 1841.

All our right and interest in the contract with Kekauluohi and Kekuanaoa, Governor of Oahu, for the exclusive privilege of cutting building stone, per instrument bearing date Sept. 13th, 1839.

All our right and interest in that charter granted by the King of the Sandwich Islands on the 24th of November, 1841, for the sole right of improving all now unoccupied lands on Hawaii, Maui, Oahu, Kauai and other islands under the dominion of His Majesty Kamehameha III., to such persons, and for such a term of years, and at and under such yearly and other rents as he shall think fit; or otherwise to sell and dispose thereof, either for life or lives, or to sell, grant and convey the same condition, all or absolutely, for such price or sum of money, and to such person or persons as he shall think fit and convenient; and also for us and in our name to seal, execute and deliver such deeds, conveyances, bargains and sales for the absolute sale and disposal thereof, or of any part thereof, with such clauses, covenants and agreements to be therein contained, as our said attorney shall think fit and expedient; hereby ratifying and confirming all such lease or leases, deeds, conveyances, bargains or sales which shall at any time hereafter be sealed and executed by our said attorney, touching and concerning the premises.

In witness whereof we have hereunto set our names and seals on this second day of December, in the year of our Lord one thousand eight hundred and forty-one.

(Signed,)

WILLIAM LADD,  
WILLIAM HOOPER.

In presence of

M. CALKIN,  
G. D. GILMAN.

Certified to be true,

P. A. BRINSMADE,  
WILLIAM RICHARDS.

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Know all men by these presents, that I, Kamehameha III., King of all the Hawaiian Islands, have constituted, ordained and made, and in

my stead and place put, William Richards, a citizen of the United States, and by these presents do constitute, ordain and make, and u my stead and place put the said William Richards to be my true and lawful attorney, for me and in my name and stead, to ask, demand, levy, require, recover and receive of and from all and every person or persons whomsoever the same shall and may concern, all sums of money, debts, goods, wares, merchandize, effects and things, whatsoever and wheresoever they shall and may be found due, owing, payable, belonging and coming to me, the said constituent, by any ways and means whatsoever.

And moreover, for the well being of my Government, and for divers other causes and good considerations, I have appointed, and by these presents do appoint the said William Richards, a citizen of the United States of America, now in the employ of my Government, my special agent, for the purpose of negotiating within the United States of America, Europe, or any other place he may visit, a loan for and in behalf of my Government to any amount, not exceeding fifty thousand dollars, in such a manner as in his judgment shall best subserve my interest; hereby authorizing him to execute such bonds or obligations as may be necessary therefor, and hereby pledge the full faith of my Government, and the credit of the same, for the approval of all acts of my said agent, and for the payment of the loan at the time and place which shall be stipulated by my said agent.

And my said agent and attorney is hereby further endowed with full and complete powers and perfect right to transact all and every kind of business whatsoever, for and in my stead, and on my account, as fully and as perfectly in all respects and particulars as in my own proper person I might or could do.

And he is furthermore authorized to sign my name and affix my seal of state, with which he is intrusted, to any and all documents and papers that may be required in the execution of his agency.

And he, the said William Richards, is hereby authorized and empowered to revoke, reclaim and nullify and render void, any and all powers and documents heretofore given under my hand, which I may own proper person could revoke, nullify and render void; hereby giving and granting unto my said attorney and agent full and whole strength, power and authority about the premises, and to take and to use all means and powers in law for effecting the same, and of recoveries and receipts thereof in my name to make, seal and execute due acquittance and discharge, and for the premises to appear, and in the person of me the constituent to represent, before any governor, judges, justices, officers and ministers of the land whatsoever, in any court of justice, and there on my behalf to answer, defend and reply unto all actions, causes, matters and things whatsoever, relating to the premises. Also, to submit any matter in dispute to arbitration or otherwise with full power to make and substitute one or more attorneys under my said attorney, and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish and finish all matters and things whatsoever on all subjects, as fully, amply and effectually to all intents and purposes, as I the constituent, if present, ought to might perform, although the matter should require more special au-

thority than is herein comprised, I the constituent, ratifying, allowing and holding firm and valid all and whatsoever my said attorney or his substitutes shall lawfully do or cause to be done by virtue of these presents.

In witness whereof I have hereunto set my hand and seal of the Kingdom, on this eighth day of April, in the year of our Lord one thousand eight hundred and forty-two, at Lahaina, Maui.

(Signed,)

KAMEHAMEHA III.,  
KEKAULUOHI, Premier of the Kingdom.

Certified to be true,

P. A. BRINSMADE,  
WILLIAM RICHARDS.

Pour expédition conforme,

[L. S.] (Signed,) E. E. J. EVENEPOEL, Notary.

Vu pour legalisation de la signature de Monsieur Evenepoele, qualifié ci dessus Bruxelles le 17 Avril, 1844. Pour le Ministre d'affaires Etrangères.

[L. S.]

Le Secrétaire Général,  
BN. DE I'SERELAES.

## ENCLOSURES TO A. FILED BY LADD & Co.

No. 1.

### CONTRACT FOR CUTTING STONE.

#### TRANSLATION.

An agreement entered into between Ladd & Co. on the one part, and Kekauluohi and Kekuanaoa on the other part.

Ladd & Co. are constituted agents for cutting and selling building stones for Honolulu, to the number of 10,000 stones, 24 inches the breadth and 32 the length of each stone, to be cut within the reef wherever it is proper to cut stones; but the laborers shall confine themselves to cutting building or lime stones, they shall not employ themselves in taking fish which are tabooed by the owners of the land. And said Ladd & Co. shall give to said Kekuanaoa & Co. four dollars for each forty stones which they cut, and Ladd & Co. shall have one dollar for each forty.

Thus shall they sell the stones. To the above-mentioned five dollars shall be added all that is paid out for cutting and carrying the stones, and the sum shall be the price for each forty.

No permission shall be given to any other person to cut stone for any foreigner, until the said ten thousand stones are all sold. This same shall also apply to limestones for burning: thus, one cubic fathom shall be reckoned the same as forty stones.

In confirmation of this, here are our several names.

(Signed,)

KEKAULUOHI,  
KEKUANA OA.

Honolulu, Sept. 13, 1839.

## DEED OF STORE LOT.

KNOW ALL MEN BY THESE PRESENTS, that I, Wm. S. Hinckley, a citizen of the United States of America, residing at Oahu, for and in consideration of the sum of sixteen hundred and twenty dollars, to me in hand well and truly paid, have granted and sold unto Peter. A. Brinsmade, William Ladd and William Hooper, also citizens of the said States, residing at Oahu, all that piece or parcel of land now in occupancy of the said Brinsmade, Ladd and Hooper, and described and bounded as follows, viz: commencing at a point bearing south, ten degrees east, distant twenty-four feet from the south easterly corner of the stone store recently erected and now occupied by the said Brinsmade, Ladd and Hooper, and running in a line with the public street; north, fifty-seven degrees east, ninety one feet from the said point to land of Wm. S. Hinckley; thence by said land, north, thirty-six degrees west, two hundred and sixteen feet to land of Francisco de Paula Marin; thence by said land, south, fifty-two degrees west, sixty feet to land in occupancy of the Government of the Sandwich Islands; thence south, thirty-five degrees east, twenty-eight feet; thence south, fifty-four degrees west, twenty-one feet; thence south, thirty-eight degrees east, thirty-five feet nine inches; thence south, fifty-four degrees west, thirteen feet; thence south, thirty-eight degrees east, twenty-one feet; thence south, forty-eight degrees west, eleven feet ten inches; and thence south, forty-two degrees east, one hundred and twenty-eight feet six inches by land owned and occupied by the said Brinsmade, Ladd and Hooper, and Wm. S. Hinckley, to the point above first mentioned, with all the privileges and appurtenances thereunto belonging, reserving a cart road through said land for my and their mutual benefit and convenience; also, one undivided half of the wharf and land included between the premises above described and the harbor, bounded northerly by lands in occupancy of the Government of the Sandwich Islands, and southerly by land and wharf in the occupancy of Stephen Reynolds.

To have and to hold the said piece or parcel of land, with the privileges and appurtenances, unto the said Peter A. Brinsmade, William Ladd and William Hooper, their heirs, executors or assigns forever.

And further, I the said Wm. S. Hinckley, do covenant and agree for myself, my heirs, executors, administrators or assigns, do hereby covenant and agree to warrant and defend the premises aforesaid against the lawful claims and demands of all persons whatever, unto the said Peter A. Brinsmade, William Ladd and William Hooper, their heirs, executors, administrators or assigns forever, excepting only such claims as may be made by the Government of these islands on said land.

And I do further avouch, that I possess full power, good right, and lawful authority to dispose of the said premises in manner aforesaid.

Witness my hand and seal at Honolulu, Oahu, this fourteenth day of March, in the year one thousand eight hundred and thirty-five.

(Signed,)

WM. S. HINCKLEY. [Seal]

Witness:

(Signed,) CHARLES R. SMITH.

I have examined and compared the within and above written copy of an instrument, with the original of which it purports to be a copy, and hereby attest it to be a true and faithful copy.

(Signed,)

P. A. BRINSMADE,  
United States Consul.

[Seal.]

### No. 3.

#### LEASE OF KOLOA PLANTATION.

This indenture, made this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and thirty-five, between Kauikaeouli, King of the Sandwich Islands, and Kaikeoewa, Governor of Kauai, on the one part, and Peter Allan Brinsmade, William Ladd and William Hooper, merchants from the United States of America, on the other part, witnesseth,

That the said chiefs deliver over to the said Brinsmade, Ladd and Hooper a certain tract of land at Koloa, on the island of Kauai, said land being situated on the east of Maulili rivulet, and bounded as follows, to wit:

Commencing at the north-west corner and running south, it is bounded by the mountain of Omeo and the Maulili rivulet; thence running in a south-easterly direction it is bounded by the same Maulili rivulet; then running in an easterly direction it is bounded by the Wailaau rivulet; then running northward it is bounded by the marsh ground of Paa and the mountain of Haupu; and on the north it is bounded by the ridge running from Haupu to Omeo.

And it is agreed by the said Kauikaeouli and Company, that the said Brinsmade and Company shall have the privilege of the waterfall of Maulili, and not only the waterfall, but also the surrounding land to the extent of sixty fathoms in length and sixty in breadth.

The said Brinsmade, William Ladd and William Hooper, their heirs and assigns, shall hold said lands unencumbered for the full term of fifty years, viz: until the year of our Lord one thousand eight hundred and eighty-five, at which time this covenant shall be null and void.

And the said Brinsmade, Ladd and Hooper do covenant to pay to said Kauikaeouli and Kaikeoewa, the yearly rent of three hundred dollars for said land, provided that Kauikaeouli and Company give them peaceable possession of said lands, free from the encroachment of all persons whatsoever.

If the said chiefs do thus transfer the land and give quiet possession of the same, then Brinsmade, Ladd and Hooper shall pay the full annual rent of three hundred dollars; said sum to be paid annually, and every year on the twenty-ninth day of July.

And it is further agreed that the said Brinsmade, Ladd and Hooper, shall be allowed at their wish to hire native laborers to work on said land; provided, however, that they shall pay to Kauikaeouli and Kaikeoewa one quarter of a dollar a month for each man, and this shall be done each and every month for each and every man, and to each native so employed they shall pay satisfactory wages.

And it is further agreed that said natives thus employed shall be exempted from all taxation whatsoever while laboring on said land, other than the quarter of a dollar per month above mentioned.

And it is further agreed by said Brinsmade, Ladd and Hooper, that during the aforementioned fifty years there shall be no ardent spirits manufactured, neither shall it be drank upon said land.

And it is further agreed by the above-mentioned chiefs, that said Brinsmade, Ladd and Hooper shall have the privilege of making a road from the above-mentioned land to join the one which Kaikeoewa is now constructing, and they and their assigns shall enjoy the privileges of said roads as far as to the present landing, and they shall be allowed the uninterrupted privilege of buying and selling, and sailing their vessels free from all charges of harbor fees or duties.

In testimony whereof we have hereunto set our hands and seals on the day and year mentioned above.

(Signed,)

KAUIKEAOULI,	[L. S.]
KAIKEOEWA,	"
P. A. BRINSMADE,	"
WILLIAM LADD,	"
WILLIAM HOOPER,	"

In presence of

(Signed,)

STEPHEN REYNOLDS,	} to the King's signature.
JOHN MEEK, Jr.,	
KAOMI,	
CHARLES R. SMITH,	

UNITED STATES CONSULATE, }  
Sandwich Islands.

I certify hereby that the official seal of Kauikeaouli, King of the Sandwich Islands, (in red impression,) was affixed in my presence to the before written instrument in the original native language, and to the before written English translation of the same by order of the said Kauikeaouli.

In testimony whereof I have hereunto set my hand and affixed the seal of this Consulate, at Honolulu, (Oahu,) this thirty-first day of December, in the year of our Lord one thousand eight hundred and thirty-five.

(Signed,)

JOHN COFFIN JONES,

[L. S.]

U. S. Consul

UNITED STATES CONSULATE, }  
Sandwich Islands.

I hereby certify the above instrument is a true copy of the original produced at this Consulate this day.

In testimony whereof I have hereunto set my name, and affixed the seal of this Consulate, at Oahu, this fifth day of December, 1837.

(Signed,)

STEPHEN REYNOLDS,

[L. S.]

U. S. C. Agent, Sandwich Islands



## No. 4.

## CORRECTION OF LEASE.

Whereas, there was a material mistake in describing the boundaries of the land mentioned in the accompanying document, therefore we, the subscribers, do mutually agree to substitute the following as the description of the boundaries of said land.

Commencing at a peak of the mountain called Koki, and running westerly over a peak called Laaukahi to a low red bluff, Okipepeiao, and thence onward in nearly the same direction to a small rivulet, then turning southerly, and following said rivulet in all its various windings through that part of it which takes the name of Waibohonu, until it is intersected by another rivulet running from the marsh grounds of Kepau, which rivulet is called Hihinni, thence following this rivulet in an easterly direction around the foot of three high mounds of earth, and thence onward in a northerly direction and nearly in a straight line through the marsh grounds of Kepau, to the first mentioned boundary.

To the above boundaries we mutually agree, and to them bind ourselves, our heirs and assigns, and therefore pronounce the eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth lines of the original document, written in the English language to be null and void.

In testimony whereof we have affixed our hands and seals, at Honolulu, this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and thirty-nine.

(Signed,)

KAMEHAMEHA III.,  
KEKAULUOHI,  
LADD & CO.

[L. S.]

“

“

*Witnesses:*

(Signed)

WILLIAM RICHARDS,  
“ KEKUANA’OA.

UNITED STATES CONSULATE, Sandwich Islands.

I hereby certify that the above is a true copy of the original.

In testimonium veritatis,

(Signed,)

P. A. BRINSMADE, U. S. Consul.

[L. S.]

Honolulu, Jan. 6, 1840.

## No. 5.

## ESTIMATE OF KOLOA PLANTATION.

A MEMORANDUM of the buildings, agricultural implements, sugar apparatus, etc., etc. on Koloa Plantation, July 17, 1841; condensed from the books of the Superintendent. To wit:

Blacksmith's shop, and tools therein,  
Carpenter's shop, stable and tool house,

\$346 50

220 00

\$566 50

Carried forward.

Brought over.	\$ 566 50
Agricultural implements, ox and horse carts, harnesses, and a great variety of tools and materials required on Plantation,	2113 38
Superintendent's stone dwelling-house,	2000 00
19 Native dwelling-houses,	330 00
Dam, sugar mill, stone sugar house, trash houses, store, etc. etc., existing at the Falls of Maulili;	4394 50
5 Yoke oxen, 4 cows, 4 mules, 5 jacks, 15 horses and mares,	1255 00
	<hr/>
	\$10659 38

MEMORANDUM of the probable cost of the sugar works now erecting at the new water privilege of Waihohonu:

Dam, water-course, foundation for mill and sluice-way,	\$ 450 00
Mill-house, 50 by 30; boiling-house, 50 by 30; sugar-house, 110 by 30;—framed and shingled,	3500 00
Horizontal sugar mill, — iron frame, complete, — weighing 18,090 lbs: two copper clarifiers, 400 gallons each; 4 do. evaporators, 400 to 100 gallons; 1 complete pitch-back water-wheel, wrought iron shaft, with duplicate pinion-wheels, etc., etc.; 50 rectangular sugar coolers; 2 trash houses, 100 feet each; cart house and stable; workmen's houses; 30,000 brick in furnaces; 6 yoke cattle, etc. etc.; stone wall enclosing 5 acres—the space occupied by the works;—	19000 00
	<hr/>
	\$15950 00

A MEMORANDUM of the buildings, etc., on Mount Pleasant plantation:

The Mansion House and out-buildings,—zinc roofed,	\$ 3000 00
The superintendent's dwelling-house,—zinc roofed,	800 00
Native houses,	100 00
Live stock, carts and various tools,	1000 00
	<hr/>
	\$4900 00

Recapitulation of the value of the improvements existing on our estates in Koloa:

Koloa plantation,	\$ 10659 38
New sugar works,	15950 00
Mount Pleasant plantation,	4900 00
	<hr/>
	\$31509 38

Na. 6.

## CONTRACT FOR MILL SITE AT KOLOA.

KNOW ALL MEN BY THESE PRESENTS, that I Kamehameha III together with my minister, Kekauluohi, do hereby grant and transfer

the firm of Ladd & Co., citizens of the United States, the privilege of erecting a sugar mill on the rivulet called Waihohonu, and situated in Koloa, on the Island of Kauai: said site to occupy a space not more than eighty fathoms square.

And I do moreover bind myself and my heirs to see that fifty full acres of land are kept in good cultivation of sugar cane for the supply of said mill, for the term of twenty years from the time a mill shall be erected.

And the said Ladd & Co. do agree on their part that the whole of the cane growing on said land shall be faithfully manufactured into sugar, provided that the cane shall be delivered by the cultivators on board of carts furnished by said Ladd & Co.

And it is furthermore agreed, that all the products of said cane shall be equally and faithfully divided between the cultivators and manufacturers, and said Kamehameha III. and Kekauluohi do agree on their part that there shall be no export duties on sugars manufactured at said mill during the aforesaid twenty years. And it is further agreed that at the end of the twenty years aforesaid, Kamehameha III. or his heirs shall come in possession of said sugar factory by paying its cost, or by paying the value which shall be estimated by three disinterested persons; but if the said Kamehameha or his heirs should decline the purchase of said factory, then the said Ladd & Co. or their heirs shall enjoy the privilege of carrying on the factory at their discretion, by paying an annual rent of fifty dollars.

It is furthermore agreed, that if the said Ladd & Co. do not erect a factory within three years from this date, then this instrument is null and void.

To the faithful performance of all which, we mutually bind ourselves, our heirs and assigns, and therefore affix our names and seals, on this twenty-seventh day of July, in the year of our Lord, one thousand eight hundred and thirty-nine, at Honolulu, Oahu, Sandwich Islands.

(Signed,)	KAMEHAMEHA III.,	[L. S.]
"	KEKAULUOHI,	"
"	LADD & CO.	"

*Witnesses:*

(Signed,)	WILLIAM RICHARDS,
"	KEKUANAOA.

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U. S. CONSULATE, Sandwich Islands.

I do hereby certify that the within and above is a true copy of the original. In testimonium veritatis,

(Signed,)	P. A. BRINSMADE, U. S. Consul.	[L. S.]
Honolulu, Jan. 6, 1840.		

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No. 7.

### LADD & CO.'S LEASE TO STETSON & CO.

This indenture, made this fourteenth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, by and between Ladd

& Co., merchants of Honolulu, and Stetson & Co., silk cultivators,—witnesseth: That the said Ladd & Co. have agreed to lease and do hereby lease unto the said Stetson & Co. that part of their cane plantation in Koloa, Island of Kauai, called the first valley, and bounded on its southern part by the stream of water called Waihohonu.

The south-easterly boundary of the land herein to be described, commences on the bank of the stream Waihohonu, at that part of it where there is a stone in which is inserted an iron ring bolt, thence running north-easterly one hundred and twenty rods more or less, to a stone with an iron ring-bolt; thence north, ten degrees east, to a marsh; thence along the edge of said marsh to a kukui tree, near which is a stone with an iron eye-bolt; thence west-north-west to a stone with two iron eye-bolts, dividing lands of Peck & Co. and Ladd & Co.; thence southerly along said dividing line to a stone with two iron ring bolts; thence south-east by east to the brook aforementioned; thence along the northern bank of said brook to the south-east boundary aforementioned,—containing one hundred and fifty acres, more or less.

With all the water or mill privileges thereto belonging.

Each of the parties, viz: Stetson & Co. and Ladd & Co., to enjoy the use of any and all the roads in said valley in common.

It is agreed that the said Stetson & Co. shall have the privilege of procuring wood and timber from wood lands of Ladd & Co., for the use of land above mentioned.

In case said Stetson & Co. desire to dispose of said land at any future time, it is agreed that Ladd & Co. are to have the refusal and preference as purchasers.

Ladd & Co. also reserve for themselves the privilege of making a road from north-east boundary aforesaid, along the border of the aforementioned marsh.

The terms and conditions on which the above described land is conveyed are as follows:

The said Ladd & Co., their heirs and assigns, agree that the said Stetson & Co., their heirs and assigns, shall have the free occupancy and use of the land herein described, until the twenty-ninth day of July, in the year one thousand eight hundred and eighty-five; and in consideration of which the said Stetson & Co. agree to pay unto the said Ladd & Co. the annual rent of three hundred dollars, commencing at the date of this instrument.

In witness whereof the parties hereby affix their names and seals.

(Signed,)

STETSON & CO.,

[L. S.]

LADD & CO.

In presence of

ASA ROGERS,  
J. LINDSEY.

SANDWICH ISLANDS, Dec. 13, 1842.

To all to whom these presents shall come, I John Stetson, of Mass. send GREETING:

Whereas, by the annexed indenture, bearing date June 14, 1839, i. the said John Stetson, became a party, as one of the firm of Stetson &

Co., in the leasing of a certain tract of land in Koloa, on the Island of Kauai. Now know ye, that I, the said John Stetson, in consideration of the sum of one dollar, to me in hand paid, the receipt whereof I do hereby acknowledge, do hereby, for me, my heirs and assigns, surrender and yield up from the day of the date hereof, unto Ladd & Co. or their assigns, all my right, title and interest in the said leased land, and all the premises aforesaid, and the terms of years therein yet to come, with all my right, title and interest thereto, and which I have or claim, or hereafter can or may have or claim, either by virtue of said indenture or otherwise howsoever.

Witness, my hand and seal, this fourth day of January, one thousand eight hundred and forty-three.

(Signed,)

JNO. STETSON, [L. S.]

In presence of

EDWIN O. HALL,  
G. P. JUDD.

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No. 8.

**CO-PARTNERSHIP AGREEMENT BETWEEN LADD & CO.  
AND STETSON & CO.**

This indenture, made this fourteenth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, by and between Ladd & Co., merchants of Honolulu, on the one part, and John Stetson, Asa Rogers, and James Lindsey on the other part, WITNESSETH:

That the said Ladd & Co. and Stetson & Co. do associate themselves under the name of Stetson & Co. for the purpose of cultivating and reeling silk at the Sandwich Islands.

The said Ladd & Co. are to be interested one quarter in the enterprise, and the said Stetson, Rogers and Lindsey, one quarter each.

In furtherance of this object, the said Ladd & Co. doth hereby agree to furnish as a capital for carrying on the business, the sum of five thousand dollars, to be furnished in such sums, and at such times, as may be required by the superintendent of the plantation.

It is further agreed, that at the expiration of each and every year, any balance which Ladd & Co. shall have against said Stetson & Co., shall be adjusted by each of the parties herein concerned in proportion to their respective interest in the business, and any balances which may be found to the credit of said Stetson & Co. shall be equally divided between the respective parties.

It is further agreed, that the general business of the enterprise shall be conducted by Ladd & Co., as general agents for buying and selling, etc., and that they shall be allowed their usual commissions.

It is also agreed that a suitable person shall be procured, who shall have the immediate management of the plantation, and all matters thereunto connected, on such a salary as shall hereafter be agreed upon; and he shall render clear and full accounts to each partner, for each and every year that the said plantation shall be under his direction. It is agreed that any profits which may result from this business shall be annually and equally divided between the parties, and if the

transactions of the co-partnership result in a loss, such loss shall be borne and paid by said co-partners equally.

It is further agreed that this co-partnership shall continue for the term of five years, subject however, to be sooner terminated, if by mutual consent of all parties concerned.

For the faithful performance of all the provisions as specified above, the parties respectively bind themselves, and their heirs and assigns.

(Signed,)	J. LINDSEY,	[L. S.]
"	JOHN STETSON,	"
"	ASA ROGERS,	"
"	LADD & CO.	"

In presence of  
(Signed,)

MILO CALKIN,  
JAMES BROTHERTON.

#### No. 9.

### COPARTNERSHIP AGREEMENT BETWEEN D. H. GOODALE AND LADD & CO.

An agreement made this twenty-third day of June, one thousand eight hundred and forty-one, by and between Ladd & Co. on the one part, and D. H. Goodale on the other part, WITNESSETH:

That the parties aforesaid have formed a co-partnership for the purpose of expressing oil from the candle or kukui nut and castor bean. The terms and conditions of the co-partnership are as follows: the said D. H. Goodale on his part, is to advance and has advanced the sum of twenty-two hundred and fifty dollars, into the hands of Ladd & Co. and they the said Ladd & Co. agree to invest in the business an amount equal to that invested by said Goodale, which two sums will constitute the whole capital employed.

It is further agreed, that the said Goodale is to have the superintendence (under the direction of Ladd & Co.) of the presses, and all the matters thereunto connected, and that he is to devote his whole time and services in promoting the interest of all concerned, for which service he is to receive for the first year, commencing at this date, the sum of four hundred dollars, and to be provided with a house and provisions for his table, for himself, and family; for the second and third year, he is to receive the annual salary of six hundred dollars, and to be provided with a house and support aforesaid.

It is further agreed, that the said Ladd & Co. are to act as general agents for the parties concerned, and are to have the sole disposition of the oils, and for such agency they are to be allowed their usual commissions.

It is further agreed, that all expenses of salaries, commissions, etc. are to be borne equally by both parties aforesaid, and the proceeds of the sales of the oils to be employed for the purpose so far as may be necessary, and that all the profits arising from the business, if any there be, to be equally divided between the said Goodale and Ladd & Co., and all the loss, if any there be, to be borne equally by the parties aforesaid.

It is further agreed, that this co-partnership shall continue for the term of three years, commencing at the date of this instrument.

In witness whereof, we have hereunto set our hands and seals, the day and year before mentioned.

(Signed,)

D. H. GOODALE,  
LADD & CO.

[L. S.]

In presence of

(Signed,)

G. D. GILMAN.

#### No. 10.

#### CHARLES TITCOMB'S CONTRACT WITH LADD & CO.

This agreement, made and concluded this twenty-fifth day of June, anno Domini one thousand eight hundred and forty, by and between Charles Titcomb, an American citizen, resident at Hanalei, on the one part, and Ladd & Co., American citizens, resident at Honolulu, on the other part, WITNESSETH:

That for a valuable consideration, the receipt whereof to his full satisfaction he does hereby acknowledge, the said Charles Titcomb does bargain, grant, sell and convey, and by these presents has bargained, granted, sold and conveyed unto the said Ladd & Co., their heirs and assigns, all the right, title, interest and property to him belonging in the co-partnership business and property of Sherman Peck & Co., together with all the privileges and immunities secured to him by the articles of co-partnership signed James J. Jarves, Sherman Peck and Charles Titcomb, and dated the first day of September, eighteen hundred and thirty-seven, and designated as the instrument here referred to by the signatures under this date of the respective parties to this agreement; also, the right, title and interest he has to any parcel or parcels of lands situated in the district of Koloa, Kauai, secured to him by lease from Messrs. Ladd & Co. to Sherman Peck and Charles Titcomb, or otherwise; and the said Titcomb does hereby covenant and agree, that all the obligations and liabilities devolving on him as a partner of the said firm of Sherman Peck & Co., shall be fully and entirely cancelled, up to the first day of June, instant, and to warrant and defend the said Ladd & Co. against all claims of every sort existing prior to the first day of June aforesaid, save and excepting such claims as have grown out of the circulation of the paper money of said Sherman Peck & Co. and are now existing.

The said Ladd & Co., on their part, agree and covenant with the said Titcomb, that they will assume and sustain all the duties, engagements and liabilities appropriately and of right devolving on him as a partner of said firm of Sherman Peck, & Co., by virtue of the said articles of co-partnership; and to warrant and defend him against all claims that would or may in any way grow out of the business of said firm, and in every point of responsibility in the premises to stand in his place and stead from and after the first day of June aforesaid.

And to the true and faithful performance of all and singular the

agreements and covenants herein contained, the parties respectively bind themselves their heirs, administrators or assigns.

In faith whereof they have hereunto subscribed their names and affixed their seals the day and year first written.

(Signed,) CHARLES TITCOMB, [L. S.]  
 " LADD & CO., "

In presence of  
 (Signed,) MILO CALKIN.

### No. 11.

### SHERMAN PECK'S CONTRACT WITH LADD & CO.

These indentures of agreement made and concluded the first day of March, one thousand eight hundred and forty-one, by and between Sherman Peck, an American citizen, resident at the Sandwich Islands, and Ladd & Co., also American citizens, resident at the Sandwich Islands, WITNESSETH:

That the said Sherman Peck, for the consideration hereinafter named, and which he hereby acknowledges to be to his entire satisfaction, does bargain, grant, sell, convey and forever quit claim, and by these presents has bargained, granted, sold, conveyed and forever quit claimed, all the leases, grants, or gifts of land in which he is interested, in part or in whole, situated on the Island of Kauai, and all his interest in the improvements and appurtenances thereunto pertaining, and all the property of every sort and description, other than that above specified which he has on Kauai, including every interest, perquisite or emolument derived to him by virtue of letters of co-partnership with Messrs Charles Titcomb and J. J. Jarves, and with the said Ladd & Co. as the substitutes of the said Charles Titcomb.

To have and to hold the same to the said Ladd & Co., their heirs and assigns forever, hereby agreeing to warrant and defend the same from any claim of any other person or persons whatsoever.

And the said Ladd & Co., in full consideration therefor, do give, and by these presents have given to said Sherman Peck, the sum of one thousand five hundred dollars, in three notes of five hundred dollars each, dated the day and year above written, and payable in twelve, eighteen and twenty-four months from this date, and bearing interest as agreed on said notes.

And to the true and faithful performance of all and singular, the agreement and covenant herein stipulated, the parties do severally bind themselves, their heirs and assigns, forever.

In faith whereof, they have hereunto set their hands and seals the twenty-third day of March, eighteen hundred and forty-one.

(Signed,) SHERMAN PECK, [L. S.]  
 " LADD & CO. "

In presence of  
 (Signed,) JOHN STETSON,  
 " JAMES F. B. MARSHALL.



## No. 12.

**KAMEHAMEHA III. LEASE OF LAND AT KOLOA TO JOHN STETSON.**

Kamehameha III. hereby leases to John Stetson, Esq., a certain piece of land at Koloa, Kauai, said Stetson from the United States of America.

The shape of the land is that of a many-sided figure having unequal angles. There are one hundred and twenty-six acres of land, and there is a draft of it on the opposite page of this paper. It adjoins the land occupied by Hooper & Co.

Said land is transferred to John Stetson, Esq., as a place for cultivation or to dwell, himself and his heirs, for the period of twenty-five years from this date.

He shall not, however, engage in the manufacture of ardent spirits, nor shall he sell them on said land; and he shall pay to Kamehameha III., his heirs or assigns, each and every year, ninety-six dollars.

And when the above term of years has expired, he shall return said land, and the buildings on it, together with the fences and whatever is connected with the land, to Kamehameha III., his heirs or assigns, the owners of the land.

In testimony of our mutual assent to this agreement, we bind ourselves, our heirs and assigns, to the fulfilment of the same, and subscribe our names below, this first day of January, in the year of our Lord one thousand eight hundred and forty-one, at Lahaina, Maui.

[L. S.]

(Signed,)

**KAMEHAMEHA III.,  
KEKAULUOHI.**

Ike maka,

(Signed,)

**JOHN II.**


---

**KNOW ALL MEN BY THESE PRESENTS**, that I, John Stetson, have granted and surrendered, and by these presents do grant and surrender, unto Ladd & Co., as agents for Stetson & Co., all my right, title and interest, in the within leased premises.

To have and to hold the same unto the said Ladd & Co., in trust for Stetson & Co., their heirs and assigns forever.

In witness whereof I have hereunto affixed my name and seal, this 18th day of May, 1843.

(Signed,)

**JOHN STETSON.**

In presence of

**WILLIAM P. AVIS.**

## No. 13.

**KAMEHAMEHA III. CONTRACT FOR PASTURAGE TO JOHN STETSON.**

It is hereby agreed between Kamehameha III. on the one part, and John Stetson of the United States of America on the other part, that the said John Stetson be allowed to pasture cattle in such numbers as he shall choose, in the vicinity of Koloa, on the island of Kauai, on a place called Paa, and bounded as follows: beginning at a hillock by the name of Kulakamoa and running southerly to Puuleia, then turning and running inland along a ridge called Kaloakapahu to Kauiki, then turning north-westerly and running to Kalabiki, then turning towards the sea and running along Palekea to the first-mentioned corner.

This land joins that which was previously leased by the said Stetson. But this land is not transferred, and does not become his, nor does the property upon it become his. He merely enjoys the right of pasturing, but his cattle shall not be interfered with in going upon said land, or in feeding upon it, or in the use of water. But if they go over the boundaries and destroy the food of the people, then the owner of the cattle shall pay damages according to the law of the Government.

And the said John Stetson shall pay each and every year to Kamehameha III. one dollar per head for all the cattle pastured on the land, but the sum shall never be less than thirty dollars. The numbering of the cattle shall be as follows. They shall be counted annually on the first day of July, and the payment shall be made each year according to the enumerations of the previous year. But if new cattle are put in from another place, then payment shall be made for such cattle from the day of entrance.

This agreement is confirmed for the term of twenty-five years, at which time it ends; and no cattle shall afterwards be pastured without the consent of the owner of the land.

In testimony whereof we bind ourselves, our heirs and assigns, to the fulfilment of the same, and set our names this first day of July, in the year of our Lord one thousand eight hundred and forty-one, at Koloa, Kauai.

(Signed,

**KAMEHAMEHA III.,**

[Seal]

"

**KEKAULUOHI,****JOHN STETSON.***Witnesses:*

(Signed,)

**W. RICHARDS,  
KANEOHA.****OAHU, Dec. 13, 1842**

Be it known to all men, that I, John Stetson, have this day transferred to Ladd & Co., their heirs and assigns, all my right and title in the land at Koloa, of which the annexed document is a lease, surrendering unto them all the privileges granted to me in said lease.

In behalf of my heirs and assigns I have hereto set my hand and seal  
(Signed,) **JOHN STETSON.** [Seal.]

*Witness:*

(Signed,)

**JAMES B. McCLURG.**

UNITED STATES COMMERCIAL AGENCY, {  
Oahu, S. I., December 13, 1842. }

Before me appeared John Stetson and acknowledged the above to be his free act and deed.

In testimonium veritatis.

(Signed,)  
[L. S.]

WILLIAM HOOPER,  
United States Commercial Agent.

No. 14.

### LEASE OF LAND AND WHARF LOT, HONOLULU.

This indenture, made this first day of November, in the year of our Lord one thousand eight hundred and forty-two, by and between M. Kekuanaoa, Governor of the Island of Oahu, one of the Sandwich Islands, on the one part, and Ladd & Co., (the individual members of which firm are Peter A. Brinsmade, William Ladd and Wm. Hooper,) merchants, citizens of the United States, residing at Oahu, on the other part,

WITNESSETH, That the said M. Kekuanaoa, for and in consideration of the rents, covenants and agreements hereinafter mentioned and reserved on the part and behalf of said Ladd & Co. to be paid and performed, hath leased by these presents unto the said Ladd & Co. all that piece or parcel of ground and wharf lot situated on the easterly part of the harbor of Honolulu, on the island of Oahu, and bounded as follows: Commencing at an imaginary point in deep water, and running north, forty-five degrees east, on the north-west line of land occupied by Ladd & Co., to the west line, distance more or less; thence along their boundary line north, thirty eight degrees west, twenty-one } along the north-  
and 7-12 feet; thence north, fifty-four degrees east, } erly and west-  
six and 9-12 feet; thence north, thirty-eight de- } erly line of  
grees west, fifty-four and 5-12 feet; thence north, } land occupied  
fifty-four degrees east, eighteen and 7-12 feet; } by Ladd & Co.  
thence north, thirty-five degrees west, sixty-one feet, along the westerly  
line of land occupied by said Ladd & Co., and the heirs of P. Manini;  
thence south, fifty-six degrees west, } along the southerly and westerly  
eighty-six feet; thence north, thirty- } line of land occupied by heirs of  
four degrees west, thirty-two feet; } Manini.

thence west by south to an imaginary point in deep water. And the said M. Kekuanaoa hereby grants to the said Ladd & Co. the full power, right and privilege, and it shall be lawful for them, the said Ladd & Co., to build such wharves, and such buildings on the above described land and wharf lot, as they, the said Ladd & Co., may think best, to be appropriated to their own special use and benefit, reserving to the said M. Kekuanaoa the privilege of one berth (equal to the time of one vessel continually,) for the native vessels, free of all charges whatsoever; also, a piece of land on the north-west side of the leased premises, not less than sixty feet by thirty feet, on which the said M. Kekuanaoa is to erect, at his pleasure, a Government store-house; it

being understood that the above reservations are commensurate with the duration of this lease, and the renewal of the same as hereinafter provided.

Now, the terms and conditions on which the contracting parties have agreed that the above land and wharf lot shall be leased, are as follows: that is to say. That they, the said Ladd & Co., are to have the sole occupancy of the above described premises, saving the reservations aforementioned, for the full term of fifty years from the date of these presents, (they shall not manufacture or sell any ardent spirits thereon) and shall pay the following rent, viz: for the three years immediately following the date of this indenture, that is to say, on the first day of November, eighteen hundred and forty-five, the sum of one thousand dollars, and for every subsequent year, ending on the first day of November, a yearly rent of one thousand dollars (\$1000) until the termination of the fifty years, or eighteen hundred and ninety-two.

It is further agreed that at the expiration of the fifty years aforesaid, the contracting parties shall choose one person each, and those two shall appoint a third, who conjointly shall affix the then value of all the buildings and improvements which may have been made on the premises by Ladd & Co., at which valuation the said M. Kekuanaoa shall have the liberty to become the purchaser and sole owner. If, however, the said M. Kekuanaoa shall decline the purchase, then the said Ladd & Co. shall have the liberty to renew the lease, on all the terms before specified.

For the due performance of all and singular the covenants and agreements aforesaid, the said M. Kekuanaoa, and the said Ladd & Co., do hereby bind themselves, their heirs, executors and assigns, firmly by these presents.

In witness whereof the said parties to these presents have herewith interchangeably set their hands and seals.

The erasure in the twenty-first, and the two alterations in the twelfth and twenty-fifth lines from the top of the first page, made previous to signing.

(Signed,)

M. KEKUANAOKA, [L. S.]  
LADD & CO. "

Approved by us, (Signed,

KAMEHAMEHA III., [L. S.]  
KEKAULUOHI,

Signed in presence of

(Signed,)

J. H. SPRING, to signature of Ladd & Co.  
JAMES B. McCLURG.

No. 15.

### LEASE OF WHARF LOT, HONOLULU.

This indenture, made this twenty-first day of February, in the year of our Lord one thousand eight hundred and forty-three, by and between M. Kekuanaoa, Governor of the island of Oahu, one of the Sandwich Islands, on the one part, and Ladd & Co., (the individual members

of which firm are Peter A. Brinsmade, William Ladd and William Hooper,) merchants, citizens of the United States, residing at Oahu, on the other part,

WITNESSETH, That the said M. Kekuanaoa, for and in consideration of the rents, covenants and agreements hereinafter mentioned, on the part of said Ladd & Co. to be paid and performed, hath leased by these presents unto the said Ladd & Co. a certain wharf lot, situated as follows, viz: commencing at the north-west boundary of land and wharf lot leased by said Ladd & Co. of M. Kekuanaoa, under date of November first, A. D. 1842, and running in a northerly and westerly direction six hundred feet along the land once occupied by P. Manini and others.

It being understood and agreed upon that the said Ladd & Co. shall have the liberty of building a wharf or wharves in such a manner as they, the said Ladd & Co., may deem advisable, extending the same into the harbor of Honolulu as far as it may suit their convenience or pleasure.

Now, the terms and conditions on which the said Kekuanaoa has leased the above described wharf lot to said Ladd & Co. are as follows: that is to say. That they, the said Ladd & Co., are to have the full and sole occupancy of said premises, for the term of fifty years from the date of these presents, yielding and paying therefor the annual rent of five hundred dollars for every year, after the twenty-first day of February, A. D. eighteen hundred and forty-five, until the termination of the fifty years, or eighteen hundred and ninety-three.

It is further understood and agreed upon, that at the expiration of the above lease, the said M. Kekuanaoa, in behalf of the Sandwich Island Government, shall have the liberty to take possession of all the improvements which may have been made upon the above described lot, provided he pays therefor a price which shall be affixed by two persons chosen by the aforementioned parties.

If, however, the said M. Kekuanaoa should decline the purchase of the improvements as above-mentioned, then the said Ladd & Co. shall have the liberty of renewing the lease on the terms as above specified.

It is also understood and agreed upon, that if, at any time, the above annual rent of five hundred dollars should remain unpaid for two years in succession, (after the date afore-mentioned, or twenty-first day of February, eighteen hundred and forty-five,) the above described wharf lot shall be forfeited, and this contract null and void.

For the due performance of all and singular the covenants and agreements aforesaid, the said M. Kekuanaoa and the said Ladd & Co. do hereby bind themselves, their heirs, executors and assigns firmly by these presents.

In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals.

Signed in presence of us. (Signed,) LADD & CO., [L. S.]  
" M. KEKUANA OA. "

(Signed,) R. W. Wood.

## B.

THE ORIGINAL IN ENGLISH FILED BY MR. RICORD, THE ORIGINAL IN HAWAIIAN  
FILED BY LADD & CO.

## No. 1.

## CONTRACT FOR GRANTS AND LEASES OF LAND.

This agreement, made and fully concluded this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and forty-one, by and between Kamehameha III., King of the Sandwich Islands, of the first part, and P. A. Brinsmade, William Ladd and William Hooper, American citizens, resident at the Sandwich Islands merchants, of the second part,

WITNESSETH, That the said party of the first part agrees to grant, and by these presents has granted, unto the said party of the second part, the full right and privilege of occupying for the purpose of manufacturing, agricultural productions, any now unoccupied and unimproved localities on the several islands of the Sandwich Islands, suitable for the manufacture of sugar, indigo, flour, raw silk, Kukui oil, or any other production of the country, by water power, steam power, or animal power, upon which they shall commence operations within five years from the date hereof, and that each such locality shall include a quantity of land not exceeding fifteen acres, and all the natural advantages of water, building materials, and all other conveniences thereunto naturally pertaining.

And the said party of the first part further agrees to lease, and by these presents has leased, unto the said party of the second part, for purposes of cultivation, a quantity of land in the convenient vicinity of each such locality that may be occupied and improved by them, not exceeding two hundred acres. And also to lease, and by these presents has leased, any now uncultivated and unimproved lands suitable for the production of cotton, coffee, or any other agricultural production in which the climate and soil may appear adapted, and upon which cultivation shall actually be commenced within five years from the date hereof.

And the said party of the first part further agrees to grant, and by these presents has granted, unto the said party of the second part, the free privilege of grass and pasturage needful for the animals that may be required in the various operations contemplated in this agreement; the said party of the second part being responsible for any damage done by such animals on cultivated grounds; and also the privilege of procuring from the forest by their own operatives, or by purchase, any quantity of fuel or timber; and also the privilege of procuring lime stone, building stone and sand, from the reefs and sea shore; and also the privilege of constructing roads, bridges and wharves as may be required for the convenience of their operations; and also the privilege of employing any number of natives by paying wages satisfactory to them, and their taxes, or the commutation therefor as fixed by the present laws of the country, or as they may be decreased by subsequent legislation.

the said party of the first part further agrees to cause to be cultivated fifty acres of sugar cane in the convenient vicinity of each sugar mill that may be erected by the said party of the second part, in pursuance of this agreement to be manufactured at such mill.

the said party of the first part further agrees, that no export duty shall be levied upon the articles manufactured or produced in the Sandwich Islands by the said party of the second part.

the said party of the second part, their administrators and assigns, every and all the grants, leases and conveyances hereinbefore specified, so long as the terms and conditions therein specified shall be fulfilled, not exceeding one hundred

the said party of the second part agree, and are by these premises bound, to stimulate and encourage in habits of industry, in lawful ways, the native landholders dwelling in the districts in their operations may be prosecuted, and to manufacture or purchase on fair and equitable terms the produce that may be developed by industry, and to use their conscientious and steady endeavors to make the Sandwich Islanders an industrious, intelligent, civilized and independent nation.

the said party of the second part further agree, that in the selection of localities and lands to be improved and cultivated in pursuance of this agreement, the present laws protecting the right of property to the natives shall be inviolably respected, and that the various localities and lands from which selections shall be made for actual improvement and cultivation within five years as aforesaid, shall be designated by the individuals of the said party of the second part, in concert with the said party of the first part, or some officer of his Government, one year from the date hereof.

the said party of the second part further agree to manufacture sugar cane that may be produced on each fifty acres of ground before agreed to be cultivated by the said party of the first part, divide the proceeds with the said party of the first part, share are alike, and to manufacture for native sugar growers for the same proportion, taking the cane from the fields where it is to be placed in carts, at the expense of the said party of the first, or other party of cane.

the said party of the second part further agree, that each and every year, for each and every acre of ground that may be selected for cultivation other than the lands which may be included in the grant for manufacturing sites, the sum of a half a dollar; and they also agree to pay for each and every manufacturing site which they may occupy, each year, the sum of ten dollars.

the said party of the second part further agree, that they will not manufacture or sell at the Sandwich Islands, any ardent spirits except the full term hereinbefore specified.

it is further agreed that the capital to be employed in the operations contemplated in this agreement, shall be a joint stock capital, to the said party of the first part shall be permitted to subscribe to the amount which he shall state in writing within one year from the date hereof; and which shall also be open to subscription to Americans.

English and French capitalists, and generally, without reference to national distinctions.

And it is further agreed by the parties, that any disagreements that may arise between the parties as to the force or obligations of this contract, shall be referred to a board of reference in the United States, England or France, to be hereafter elected by the parties mutually, with power to fill vacancies, whose decision shall be binding upon both the parties, and from which there shall be no appeal whatever.

And to the true and faithful performance of each and all the agreements and covenants hereinbefore stated, the parties do severally bind themselves, their heirs, executors, administrators and assigns forever.

In faith whereof they have hereunto subscribed their names and affixed their seals respectively and interchangeably, at Lahaina, Maui, on the day and year hereinbefore first written.

KAMEHAMEHA III. [Seal]

KEKAULUOHI.

P. A. BRINSMADE,  
WILLIAM LADD,  
WILLIAM HOOPER.

Witness to the three last signatures:

M. CALKIN,  
G. D. GILMAN.

## No. 2.

FILED BY J. RICORD.

### CONDITIONS OF THE ABOVE CONTRACT.

The undersigned having this day entered into contract with Kamehameha III., King of the Sandwich Islands, for extensive grants and leases of lands for the purpose of cultivating and manufacturing agricultural productions, hereby agree that said contract shall be null and void unless the Governments of Great Britain, France and the United States shall, either by conventional agreement, or by some formal act of each, acknowledge the sovereignty of the Sandwich Islands Government, and accord to it all the rights, powers and privileges and immunities of an independent state.

LADD & CO.

Sandwich Islands, Nov. 24, 1841.

## No. 3.

### AGREEMENT TO EXTEND THE TIME FOR SELECTING LANDS.

FILED BY LADD & CO.

Whereas it appears that an agreement was entered into on the twenty-fourth day of November, one thousand eight hundred and forty



one, by and between the undersigned, on behalf of the Sandwich Island Government on the one part, and Peter A. Brinsmade, William Ladd and William Hooper, merchants, on the other part, for the purpose of cultivation and for various other purposes more particularly set forth in said agreement; and as it appears by said agreement, that the various lands on which the operations are to commence are to be selected within one year from the date of said agreement—

Now, be it known unto all men, that at the request of said parties of the second part, and for various other considerations, we, the undersigned, herewith extend the time during which the selection of land is to be made unto the twenty-fourth day of November, one thousand eight hundred and forty-five, or four years from the date of the agreement aforesaid; and we also agree to extend the time on which the occupation and improvement of the selected lands must take place, until the year one thousand eight hundred and fifty-one, or ten years from the date of the agreement aforesaid; and the remaining provisions and obligations of said agreement are in no wise to be affected by this document.

In witness whereof we have hereunto set our hands and seals this thirteenth day of September, one thousand eight hundred and forty-two, at Honolulu, Oahu.

[Seal.]

KAMEHAMEHA III.,  
KEKAULUOHI.

C.

FILED BY J. RICORD.

## STATUTES OF THE ROYAL COMMUNITY OF THE SANDWICH ISLANDS.

Messrs. Count de Hompesch, in the name of the Belgian Company of Colonization, Wm. Richards and Timothy Haalilio, in the name of the King of the Sandwich Islands, and Peter Allan Brinsmade, in the name of the house of Ladd & Co., have agreed upon statutes for the Royal Community of the Sandwich Islands, as follows:

### CHAPTER FIRST.

*Object of the Community.* The community has for its object to favor the progress of civilization in the archipelago of the Sandwich Islands, to encourage agriculture, industry and commerce in that archipelago, and to develop commercial relations with Belgium.

*Article first.* The apport made to the community by the Belgian Company of Colonization, is composed of the different privileges, rights and properties, designated in chapters one and two, articles 1, 2, 3, 4, 5, 6 and 7 of the contract hereunto annexed. It shall receive for the price of that apport, the number of shares stipulated in the said contract, article 16, and the advantages mentioned in article 17 of the same contract.

*Article second.* The funds of the community are composed of the apport stipulated in article 1st, and is represented,

1st. By shares to bearer, or to nominatives, at the choice of the shareholders, put on subscription.

2nd. By 500 titles of property, giving each the right to a proportional part in the profits of the community as it is stipulated in article 14, and also to an equal division of the goods and property of the said community, as is said in article 14.

*Article third.* The subscription shall be divided into as many series of shares as the operations of the community may require, which shall be decided by the council general of the Belgian Company of Colonization upon the advices of the administration of the community at the Islands, of which mention is made hereafter, in article 11.

*Article fourth.* The first series is fixed at four thousand shares; the price of each share is one thousand francs. The payment of subscription shall be effected in the following manner:

1st, 20 per cent. at the moment of subscription.

2nd, 20 per cent. six months after that date.

3d, 12 per cent. twelve months after the same date.

4th, 11 per cent. eighteen months after the same date.

The remainder of the subscription shall be paid upon the decision of the council general of the Belgian Company of Colonization, in accordance with special propositions of the administration of the community at the Sandwich Islands, authorized by the King and Government of those Islands.

*Article fifth.* A minimum of 4 per cent. interest is guaranteed by the King and Government of the Sandwich Islands during six years, to the bearers of the said shares, upon the amount paid in upon the first series of shares as mentioned in article 4. This minimum of interest is hypothecated upon the public revenues of the Islands. The Belgian Consul, or in default of one, the commissary appointed by the direction of the community at Bruxelles, shall receive upon those revenues the sum necessary to complete the payment of the minimum of 4 per cent. interest when the nett profits shall not amount to 4 per cent.

The interest shall be calculated to the 31st of July of each year, upon the payments effected one year before that date.

*Article sixth.* This guarantee shall cease before the expiration of six years, if by a decision of the council general upon propositions mentioned in the last paragraph of article 4, a second series is emitted before that epoch.

*Article seventh.* The subscriber receives against the first payment, a promise of a share. That promise of a share is exchanged for a definite title on the day of the fourth payment, mentioned in article 4.

*Article eighth.* Every subscriber who does not at the proper time make the second or either of the following payments, forfeits by that fact alone, all the rights which his titles confer upon him, and the payments made by him revert to the community, without his having the faculty to any recourse to the community, which on its part has afterward no claims or demands to exact against the subscriber. Nevertheless, the subscriber has one month subsequent to the date when payment is due, for laying a reclamation before the direction of the community; that reclamation is submitted to the council general, who have the right to maintain or to omit the forfeiture.

*Article ninth.* The subscribers are never held for any other payments than that of the amount fixed for each subscription.

There can never be exacted against them on that head any reclamation, even for the restitution of a part of the profits. From the day when that part of profits is accorded to them, it becomes definitively acquired by them.

*Article tenth.* The amount of the subscription shall be employed to the profit of the community, for agricultural, manufacturing and commercial operations, or when the council general shall judge it useful for the interests of the community, for the purchase of shares of the community.

*Article eleventh.* No emission of a new series after the first can take place but upon a decision of the council general, taken in pursuance of a demand from the administration at the Islands, of which mention is hereafter made, nor till after the entire payment of the first series.

*Article twelfth.* Every share is detached from a register, (*à souche*) having a corresponding marginal reference.

*Article thirteenth.* The transfer by the endorsement of a share to a nominative confers no definitive rights to the holder until the said transfer has been inscribed upon the registers of the community.

There is paid to the community one franc per share at the time of the inscription of the transfer.

*Article fourteenth.* There are created 500 titles of property, divisible each into ten parts. These titles do not enjoy any interest, and can have the right only to one half the nett profits which remain after deducting 5 per cent. payable to the stockholders by title of interest.—These titles shall have the right also to one half of the gains of the community at the time of dissolution, after the reimbursement of the capital.

These titles of property shall be divided and distributed as follows:

Two hundred titles shall appertain to the King and Government of the Sandwich Islands, of which one hundred shall be forever inalienable, the other hundred disposable and alienable.

Two hundred shall appertain to the Belgian Company of Colonization, of which one hundred shall be forever inalienable, the revenue of which shall be distributed by the said company to their proper shareholders.

The remaining hundred are at the disposition of the committee of directors.

The last hundred titles shall be deposited in the coffers of the community, and shall be inalienable; their revenue is to be applied to the benefit of the employés and laborers of the community.

## CHAPTER SECOND.—SECTION FIRST.

### OF THE ROYAL COMMUNITY.

*Article fifteenth.* The title of the community is the Royal Community of the Sandwich Islands.

*Article sixteenth.* The royal community is composed,

1st, Of the King and Government of the Sandwich Islands.

2nd, Of the Belgian Company of Colonization. \*

3d, Of the holders of shares and of titles of property.

*Article seventeenth.* The duration of the community is fixed for 90 years, which commences from this date. After the expiration of this period it can be prolonged by the agreement of all parties; nevertheless, in case of unforeseen and strong emergency, it can be dissolved before the time above fixed, upon the demand of at least half the shareholders, possessing among them at least two thirds of the shares and titles of property.

*Article eighteenth.* The principal seat of the community is fixed at Bruxelles, and the seat of its principal agency is fixed at Honolulu, Sandwich Islands.

*Article nineteenth.* The community has for its object, 1st, to create agricultural, manufacturing and commercial establishments at the Sandwich Islands.

2d, To establish commercial relations between those Islands and Belgium, and other places, where the interests of the community shall require it.

*Article twentieth.* The lands put in cultivation by the community, the buildings, the agricultural, commercial or other establishments founded or acquired by the community, the furniture, utensils and instruments, form a property indivisible until the period of liquidation.

*Article twenty-first.* The different establishments of the community at the Islands are to be at all times supplied by its cares with all articles necessary for the support of laborers and conformably to the demands or advices of the administration at the Islands.

*Article twenty-second.* The royal community has the exclusive right of creating bonds to bearer for its own account; these bonds shall be received in payment in all the stores and coffers of the community.

These bonds can serve but for a representative value, and can never be emitted for a value greater than two thirds of the merchandise in store, and of cash in the coffers of the community.

If the wants of circulation require it, the royal community can upon the favorable decision of the council general, and in common accord with the Government of the Sandwich Islands, and with its authorization provide for these wants by the foundation of a bank, or by any other means which shall be judged useful to that effect.

*Article twenty-third.* Every laborer or employé of the community at the Sandwich Islands, and bearer of these bonds, may receive if he desire it from the administration, in exchange for these, bills at sight upon the general treasury of the community at Bruxelles, if, after having fulfilled his engagements to the community he wishes to return to Europe.

If during the period of his engagement, a laborer or employé, a bearer of these bonds, wishes to remit funds to Europe, the administration will exchange for them bills at sight annually, to the amount of two thousand francs without discount.

*Article twenty-fourth.* The expenses of passage for laborers and employés, may at their wants be advanced to them by the community.

*Article twenty-fifth.* These expenses of passage are to be retained from their first three years' salary.

*Article twenty-sixth.* All the laborers of the community without exception, are subject to the rules of order, inserted in their books and

accepted by them. The application of these rules is made by a jury or by a tribunal of disinterested persons, chosen by the authorities of the Islands.

*Article twenty-seventh.* The annual product of the hundred titles of property, deposited in the coffers of the community, shall be paid by the cures of the administration of the community at the Islands, with the authorization and under the surveillance of the council general.

1st, For the support of schools, where the children of the laborers may receive religious and moral education.

2d, For the establishment of a service of health, in order to a gratuitous relief in cases of the sickness of the laborers, their wives and their children.

3d, For the support and instruction of the orphans of laborers who die during the period of their engagement.

4th, For the creation of pensions for every impotent laborer, or for every laborer who after having been a part of the community during twenty years, and having attained the age of 45 years, shall have the right thereby to retire.

Every laborer in retirement, or the widow of a retired laborer, has the right for himself and his wife to a free passage to Antwerp or Ostend, if he desire to return to Europe, the expense of the passage is supported from these same funds.

*Article twenty-eighth.* All persons, of whatever profession, in the service of the community, and introduced into the Islands under the auspices of the community, with the approbation of the King of the Sandwich Islands, shall receive in fee simple twenty hectares of land; he shall enjoy the civil rights accorded to foreigners according to the established usages among European nations; he shall be subject to the constitution and laws existing or to be made in the Islands, and must obey the authorities created in virtue of the constitution. He can in no case nor under any pretext, or through any agency whatever, or or by whatever titles they may be invested, alter any claim under the title of foreigner, and in case of difference can have no other recourse but to the tribunals of the country, or to the administration of the community, who will afford him their good offices near the Government of the Sandwich Islands.

*Article twenty-ninth.* The community is placed in Belgium under the protection and superior administration of the Belgian Company of Colonization, and at the Sandwich Islands under the patronage and protection of the sovereign of those Islands.

*Article thirtieth.* The royal community of the Sandwich Islands forms an establishment distinct, and is entirely separate in interest and administration from other establishments already founded, or which may be founded by the said Company.

*Article thirty-first.* All the affairs of the community in Belgium are administered by a direction, composed of one director general, and of two or four councillors, and of one secretary.

The director general shall be appointed among the members of the committee of directors of the Belgian Company of Colonization, by the council general. The appointment of the councillors and secretary appertains to the committee of directors.

*Article thirty-second.* The direction administers under the surveillance of the council general and of commissaries appointed by the Belgian Government and the King of the Sandwich Islands.

*Article thirty-third.* All the acts of the direction are signed by the director and countersigned by the secretary.

*Article thirty-fourth.* All the resolutions of the direction are taken by an absolute majority of votes—in case of an equal division the side on which the director votes preponderates.

*Article thirty-fifth.* The members of the direction meet at the seat of the community at least once a week.

*Article thirty-sixth.* The members of the direction are elected for five years. They are re-eligible. The first going out shall take place the \_\_\_\_\_. The order of going out shall be determined by lot.

*Article thirty-seventh.* The attributions of the direction are:

1st. To deliberate and determine upon all measures to be taken in Belgium, and which it may believe useful to the interests of the community. In consequence it regulates the movement and employment of funds, the purchases and sales, the offers of advances upon consignments, the credits to be accorded or refused.

2d. To represent the community in justice, to compromise and agree upon all matters of contestation.

Prosecutions are entered upon under the request of the director.

*Article thirty-eighth.* The director shall address every month a report upon the situation of affairs to the council general. All operations in the Sandwich Islands are, as far as possible, entered upon only in pursuance of advices from the board of administrations in the Islands. The director has the general direction of operations. He is charged with the execution of the decisions of the direction. He appoints and revokes the employeés. He signs the correspondence, accepts, subscribes and endorses all letters and bills of exchange.

## SECTION SECOND.

### PRINCIPAL AGENCY.

*Article thirty-ninth.* The affairs of the community at the Sandwich Islands shall be administered by a board of administrators, composed of one director, one secretary general, and four administrators.

*Article fortieth.* For the first time Mr. Richards is appointed director. M. M. administrators, &c.

*Article forty-first.* The members of the administration are elected for five years. They are re-eligible. The first going out will take place the \_\_\_\_\_. The order of going out will be determined by lot.

*Article forty-second.* Hereafter the director and two of the administrators shall be appointed and revokable by the King of the Sandwich Islands, the secretary and the two other administrators by the council general of the Belgian Company of Colonization.

*Article forty-third.* The attributions of the administration at the Sandwich Islands are to deliberate and to determine upon all measures to be taken at the Islands, which shall be judged useful to the interests of the community. Particularly to determine the kind and extent of agricultural and manufacturing operations, the terms of sales, and the

bases of returns, to refuse or to accept credit, and to indicate the bases in Europe for shipment and sale at the Islands.

10. The resolutions are taken by the majority of votes, and in case of an equal division the side on which the director votes preponderates.

*Article forty-fourth.* All persons taking part in the direction at the Islands, and those composing the board of administration at the Islands, must have an interest in the community.

*Article forty-fifth.* The amount of that interest for the directors cannot be less than ten shares, or five titles of property; for the counsellors, administrators and secretaries, five shares, or two titles of property. These shares or titles of property shall be deposited as a guarantee for the faithful discharge of their respective functions.

*Article forty-sixth.* The expenses of administration in Belgium shall be covered by a commission of 2 1-2 per cent. on all purchases in Europe for the account of the community, and of 5 per cent. on the sales of returns and merchandize, and 1-2 per cent. upon the collection of bills of exchange.

*Article forty-seventh.* The expenses of administration at the Islands shall be covered by a commission of 5 per cent. on all sales for account of the community, of 2 1-2 per cent. upon all returns on merchandize, on the price of production or purchase, and 1 per cent. on bills of exchange remitted to Europe.

*Article forty-eighth.* On the 31st of July of each year, a balance sheet showing the state of the affairs of the community at the Sandwich Islands, shall be addressed under the care of the administration at the Islands, to the seat of the community at Bruxelles, by the first subsequent conveyance. At the same time the accounts of the community at Bruxelles shall be closed, and for the first time at Bruxelles, and at Brussels the 31st day of July, 1845.

*Article forty-ninth.* Each year, on the reception at Bruxelles of the balance sheet of the community at the Islands, the committee of directors shall make out a general balance sheet, which shall be submitted to the examination of the council general of the Belgian Company of Colonization.

*Article fiftieth.* The council general, acting under the inspection and with the concurrence of the commissaries mentioned in article 10, and of two commissaries appointed by the stockholders, shall determine the amount of dividends, after the examination of the general balance sheet. Notice shall be given of the amount of dividends decided, at least fifteen days before the payment of the dividend, which shall take place on the first Monday of the month of May of each year. No interest exceeding 4 per cent., or dividend upon the nett profits, shall be paid to the stockholders until after the reimbursement to the directors of the Sandwich Islands, from that excess, of the advances which they have previously made by reason of the guarantee of the minimum interest.

*Article fifty-first.* Every year, upon the nett profits of the operations of the community—1st, an interest of 5 per cent. shall be acquired to the stockholders, all exceptions being made for the case stipulated in the last paragraph of the preceding article.

2. There shall be deducted afterwards 20 per cent. to form a re-

served fund to be employed for the interest of the royal community of the Sandwich Islands, by the decision of the council general. When this reserved fund shall have risen to the sum of 100,000 francs, the surplus shall be joined to the dividend and distributed by the same rule.

*Article fifty-second.* These deductions being made, the remaining nett profits shall be divided by the council general in the following manner:

One half shall appertain to the stockholders, the other half to the bearers of titles of property.

*Article fifty-third.* In case of dissolution of the community at the period fixed by the present statutes, or at a previous period on account of any reason unforeseen, the final liquidation of its affairs shall be effected by three commissioners, the one appointed by the King of the Sandwich Islands, another by the Belgian Company of Colonization, and the third by the stockholders.

These commissioners shall proceed according to the common right, and under the surveillance of the commissaries of whom mention is made in article 32 of the present statutes.

The undersigned approve of the preceding rules of organization for the community of the Sandwich Islands, conformably to the contract passed the 19th of May, 1843, excepting the changes in the form of drafting, and the additions necessary to the regularity of the statutes, and to the administrative proceedings, without any alteration of the basis established in the present act.

Brussels, 13th April, 1844.

(Signed,)

HAALILIO,  
WILLIAM RICHARDS,  
P. A. BRINSMADE.

Le President du Comité des Directeurs de la Compagnie Belge de Colonisation.

(Signed,)

C. HOMPESCH

D.

No. 1.

FILED BY J. RICORD.

## MESSRS. RICHARDS & SIMPSON'S LETTER OF INSTRUCTIONS.

GENTLEMEN,—Having this day been appointed Envoys Extraordinary and Ministers Plenipotentiary from this Government to the Court of Great Britain, you will please receive these instructions in the date of your embassy.

The grand, ultimate object, which you are to have in view, is to secure the acknowledgment of the independence of this nation. You will also endeavor to make some arrangement for the settlement of all difficulties as may unhappily occur between the two nations, or any of the citizens thereof. The plan which has appeared most feasible to us



is the one proposed in our letter to Her Majesty the Queen, with a copy of which you are furnished.

Should you visit any other nations than Great Britain, which you will do at your discretion, you will do it for the same great object as mentioned above. You will keep in mind the great evils we have suffered during the last few years, and will make such a representation of them as your wisdom shall suggest. You will especially make it a great object to annul those engagements which are now very embarrassing to us, having never been ratified by foreign Governments, while at the same time they are considered as binding on us. In place of those promises, you will endeavor to substitute formal treaties, which shall be honorable to our nation and beneficial to all concerned.

We wish you also to keep in mind the great importance of foreign nations being represented here by men of a truly philanthropic character, and will endeavor to secure the appointment of such.

Mr. Haalilio will be with you, and you will associate his name with yours by inserting it in your blank commissions, or not, at your discretion.

We commit the destinies of our nation in a great measure to you. We shall feel a deep interest in hearing from you from time to time, and knowing the progress of your mission, and when accomplished shall expect Mr. Richards to return and report to us in person.

May the blessing of Almighty God be on you and on your embassy.

Written at Lahaina, Maui, Sandwich Islands, April the 8th, A. D. 1842.

By

[Seal.]

KEKAULUOHI, Premier.

To Sir GEORGE SIMPSON, and }  
Rev. WILLIAM RICHARDS. }

KAMEHAMEHA III.

No. 2.

FILED BY J. RICORD.

## MESSRS. RICHARDS & SIMPSON'S LETTER OF INSTRUCTIONS.

**GENTLEMEN,**—Having this day been appointed Envoys Extraordinary and Ministers Plenipotentiary from this Government to the Courts of Great Britain, France and the United States of America, you will please receive these instructions in the duties of your embassy.

It is our wish that no time be lost, but that you visit each of the Courts above mentioned as early as possible.

The grand, ultimate object, which you are to have in view, is to secure the acknowledgment, by those governments, of the independence of this nation. You will also endeavor to make some arrangement for the settlement of difficulties which may unhappily occur. The plan which has appeared most feasible is the one proposed in our letter to the Sovereigns of the three nations mentioned above, of which you are furnished with a copy.

You will keep in mind the great evils we have suffered during the last few years, and will make such representations of them as your wisdom shall direct, and circumstances allow. You will endeavor to obtain redress for the same, or at least adopt such measures as shall appear most likely to remedy the evils.

You will especially make it a great object to annul those engagements, which are now very embarrassing to us, having never been ratified by those Governments, while at the same time they are considered binding on us.

In place of those promises you will endeavor to substitute formal treaties, which shall be honorable to our nation and beneficial to all concerned.

We wish you also to keep in mind the great importance of foreign Governments being represented here by men of truly philanthropic character, and you will therefore do all in your power to obtain the appointment of such, and, if possible, have a special article introduced into the new treaties, allowing us the fullest rights of independent nations in relation to such persons.

Our relations with France will need your very special attention, and while at the French Court you will endeavor, as far as possible, to defend our honor, and place our relation with that Government on a better footing.

It is our wish that you act with great caution on the varied business of your embassy, but would still wish you to persevere in it until every hope of success shall fail, keeping in mind the disastrous consequences which must inevitably result from such a failure. We feel it to be our final struggle for existence. We have long been discouraged, and many of our public acts have been performed with great hesitancy. But if the business with which you are charged can be accomplished, we shall then feel ourselves safe.

We shall feel a deep interest in hearing, from time to time, of the progress of your mission, and when accomplished, shall expect Mr. Richards to return and report to us in person.

That the care of Almighty God may be over you, and his blessing attend you, is the prayer of

Your sincere friend.

Written at Lahaina, Island of Maui, this eighth day of April, in the year of our Lord one thousand eight hundred and forty-two.

KAMEHAMEHA III. [Seal.]

KEKAULUOHI.

To Sir GEORGE SIMPSON, and }  
Rev. WILLIAM RICHARDS. }

E.

FILED BY LADD &amp; CO.

**LETTER FROM MESSRS. TINKER, LAFON & GULICK, TO  
LADD & CO.****MESSRS. LADD & Co.**

**GENTLEMEN,**—Hearing that Mr. Hooper is about to leave for the United States, if not gone already, allow us to earnestly recommend that he procure at least one additional sugar mill to be located at Koloa. It would be a favor to us personally. Besides, the people are turning their attention more and more to the cultivation of cane, and should they fail of getting it ground, as many of them must unless your establishment is enlarged or new ones undertaken, they would be discouraged, and the incitement to industry from this source be diminished and in a measure lost. There seems to be at present no better field of labor opening before them, and it is of high importance that it should be improved; that the waste places be fruitful fields; that the earth here possessing in her bosom "all manner of store," should yield it up, as it freely will, when sought for by the hand of cultivation. We trust that the success of your enterprise here thus far justifies the enlargement of your operations; and that, if your recompense in a pecuniary point of view is insufficient, you may find a reward in the industry which it has awakened and gratified in this portion of the Sandwich Islands' nation.

Respectfully your friends,

**REUBEN TINKER,  
THOMAS LAFON,  
PETER J. GULICK.**

Koloa, Kauai, S. I., January 10th, 1840.

F.

FILED BY LADD &amp; CO.

**LETTER FROM MESSRS. CASTLE AND OTHERS, TO LADD  
& CO.**

HONOLULU, January 11, 1840.

**To MESSRS. LADD & Co.**

**GENTLEMEN,**—In reply to your inquiry as to the views we entertain respecting the bearing which your establishment on Kauai, for the manufacture of sugar, will be likely to exert upon the interests of this nation under the operation of the laws recently enacted by this Government, it gives us pleasure to state to you that we believe the direct influence of your manufactory there will be salutary in its effects upon the native population of these islands.

As we understand the system upon which your establishment is conducted, viz: to be confined to the manufacturing sugar from cane for the natives upon shares, we conceive it to be well adapted to promote industry among the people, as it makes the income of each individual

to depend solely upon his own perseverance and industry, as also to develop the pecuniary resources of the country. As it is true that indolence begets vice, so it is true that industry promotes virtue, without which no nation can long exist as such, and which is not possessed to any extent where indolence reigns. All successful efforts, then, to promote industry, by proper means, tend to promote virtue, and must be beneficial to that people upon which they are bestowed.

Industry, to produce its legitimate effect, must be the result of motives presented to the mind to induce voluntary labor. This being the case, we consider such establishments as yours, which offer to the natives, without a capital, the means of preparing their produce for market, it being understood that the new law secures to the native the undisturbed possession of all the products of his land, and the land itself by the payment of a reasonable tax or rent, as highly important to the best interests of this nation in the promotion of industry and virtue, and the development of the resources of the country.

With the hope and belief, gentlemen, that your establishment will prove mutually beneficial to yourselves and the native population of these islands, we must cordially wish you success in your enterprise, and remain,

Very truly,

Your friends and obedient servants,

H. BINGHAM,  
LEVI CHAMBERLAIN,  
LOWELL SMITH,  
HENRY DIMOND,  
AMOS S. COOKE,  
HORTON O. KNAPP,  
SAMUEL N. CASTLE

G.

FILED BY LADD & CO.

LETTER FROM MR. RICHARDS TO MR. BRINSMADE.

HONOLULU, March 31st, 1842.

MR. BRINSMADE.

DEAR SIR,—You will learn from Mr. Ladd, as I will also now inform you, that it is my expectation to start for the U. S. A., via Mexico, in company with John Young, by the first opportunity that occurs after the 20th of May next; and if no opportunity should occur within six weeks of that time, a vessel will probably be sent on purpose to convey us to Mazatlan.

The object of this movement is to aid in carrying out the plan you have in view. The reasons are, that Sir George Simpson, Governor-in-Chief of the Hudson Bay Company's Territories, has been here and has his whole soul interested in the welfare of this nation, and particularly in the *Triad plans*, and proposed to have his name united with mine, and full powers given us by this Government to carry out whatever plan we shall judge best.

The King holds letters of credit from him on the Hudson Bay Com-

pany for any amount of funds which may be necessary. I have also letters of introduction to such persons of distinction in England, and so backed up by Sir George's private letters, as will give me great advantage for carrying out any desirable plan. It is a profound secret here except to a few, but all who have been consulted here consider it an auspicious moment, and no time to be lost. But Sir George having proceeded to England by way of Kamachatka will not reach London until November next.

There will be no object therefore in our reaching London before that time. But in case of any accidents befalling Sir George, my letters of introduction will then come in play. I do not mention even to my *own children* in the U. S. A. that I am going, and think it best it should remain unknown there as it now is here. With these facts before you, you can judge in what manner to modify your movements. If you have not already sailed for England when this arrives in the U. S. A., I shall hope to meet you in New York in all September next; though you can better judge of the time than I from the date before mentioned.

Sir George Simpson expressed the fullest conviction that the object can be effected, but thought it could be done in no other way than by sending an agent with full powers. We hope the hand of God is in this movement, and look to him for aid in carrying it forward.

The King has not conducted well since you left, but just at present we are a little encouraged. I shall hope to report better things when I see you.

With warm affections, I am truly yours,  
WILLIAM RICHARDS.

H.

FILED BY LADD & CO.

# LETTER FROM MR. RICHARDS TO MR. BRINSMADE.

LAHAINA, June 15th 1842.

DEAR BRINSMADE,—I wrote you March 31st, via Mexico, and in that apprised you of my design to visit the U. S. A., if an opportunity should offer, for the purpose of carrying out the Triad Plan. I informed you of the reasons of this movement, and the great facilities which have been afforded me, and the powerful aid which I shall be able to command. By the same opportunity Ladd & Co. wrote you to suspend all operations until I shall arrive. The prospect of war with Mexico has thrown some obstacles in my way, and when I left Oahu last week I was hesitating as to means of conveyance. But since seeing the King it is determined to send a vessel forthwith. I shall hope to sail on the 4th of July either to Mazatlan or Panama as circumstances shall require. I may still, therefore, cherish the hope of meeting you by the last of September or first of October, though you can judge better than I as to the time.

I shall have command of sufficient funds to carry out any plan we shall devise.

As to news from the Islands, all that I have to communicate is good. Since I last wrote you, new light has dawned on the prospect of this nation, or rather it dawned before the date of that letter, and since that time the sun has actually risen.

For two months and a half the King has taken no kind of intoxicating drink, not even wine, cider or beer, and all the chiefs have followed his example, have nearly all signed the teetotal pledge, and the present prospect is that he and most of them will stand firm.

The friends of the nation never indulged so high hopes as at present. I write you with a light heart, for we believe the work is of God, and therefore will not come to nought.

The state of religion too is encouraging at several of the stations, quite as much so as in 1838, though there is none of that strong excitement.

Popular opinion among foreigners is better than it has been. I think you had better write me immediately on the reception of this and inform me where I shall meet you. You had better direct as follows: William S. Richards, Esq., Charleston, S. C. William S. Richards, Esq., New Orleans, La. William S. Richards, Esq., Washington, D. C. I may touch at one of the former places, and may perhaps pass through the latter. If I hear nothing I shall steer for the city of New York.

Hoping to see you soon, I am,

Very affectionately yours,

WILLIAM RICHARDS.

P. A. BRINSMADE, Esq.

# I.

No. 1.

FILED BY LADD & CO.

## PROPOSITION.

WHEREAS, Messrs. Ladd & Co., merchants, of Honolulu, Oahu, Hawaiian Islands, are by reason of divers losses and untoward circumstances, unable to meet their monetary engagements; and their remaining property being exposed to great and injurious sacrifice by reason of actions now in suit against them; and whereas, Messrs. Ladd & Co. are desirous of being placed in a situation, and with means to enable them to pay all their debts, the following propositions are submitted to their creditors, to wit:

*First.* That five years time, from the 1st day of May next, be secured to Messrs. Ladd & Co., by the undersigned creditors, for the payment of their debts.

*Second.* That the securities now held by any of their creditors be continued, by renewal or endorsement, for the term of five years from May 1, 1845.

*Third.* That all actions now in suit be suspended, and all property and rents belonging to their estate be restored to said Ladd & Co.'s use and possession.

*Fourth.* That Messrs. Ladd & Co.'s creditors advance to them, six months from the 1st day of May next, a sum of money equal to 12 1-2 per cent. of their claims on said Ladd & Co., as a loan with which they may be enabled to carry on business. Said loan to be repaid with interest 12 1-2 per cent. in five years from said May.

*Fifth.* That each creditor hereby engages himself to give up at any time, any and all demands or securities he may hold against or from Messrs. Ladd & Co., by their tending payment for the same.

And we, the aforesaid Ladd & Co., of the first part, do hereby engage ourselves to the undersigned creditors of the second part, to the full and entire completion of the five foregoing propositions on our part, to the best of our judgment and ability.

Therefore, we the undersigned creditors of said Ladd & Co., of the second part, do accede to and accept the foregoing propositions, and do hereby bind ourselves, our heirs and executors, to the said Ladd & Co. of the first part, to and for the complete observance and fulfilment of each and all of the foregoing propositions.

It is hereby expressly stipulated, that our respective signatures are not binding or of force unless in concurrence with the signatures of all the creditors of Messrs. Ladd & Co.

In testimony whereof we hereunto subscribe our names, and set our seals, this — day of April, 1845, at Honolulu, Oahu, Hawaiian Islands.

## No. 2.

FILED BY LADD & CO.

### ESTIMATE OF KOLOA PLANTATION, 1845.

Dr.

1 Superintendent and board,	\$1,500
1 Assistant, "	500
1 Carpenter,	300
1 Blacksmith,	300
80 Natives, 9 mos., 15,600 days, at 18 cents cash,	2,808
20 " 3 " 2,620 " "	471 60
Taxes 40 men, at 25 cents,	120
Rent, K. P. proper,	300
" Stetson's pasturage,	300
Contingent,	1,000
	<hr/>
	\$7,399 60

### CONTRACTS AND LEASES, OAHU.

- 1, Deed Premises, Oahu;
- 2, Contract coral stone, "
- 3, " Canal, Lahaina;
- 4, " 50 acres cane, Koloa;

- 5, Contract Pasturage, Stetson, Koloa;
- 6, " Belgian;
- 7, Lease Koloa Plantation, Koloa;
- 8, " " to Stetson & Co., Koloa;
- 9, " " to Peck & Co., "
- 10, " Stetson & Co., "
- 11, " Ware house, sea side, "

## TOTAL CROP 220 TONS.

	Cr.
110 Tons sugar, at 3 c.	\$6,660
8800 Galls. molasses, at 12 c.,	1,056
Lease estate " Peck & Co.,"	300
" " " Stetson & Co.,"	300
Profits on goods sold Planters,	1,000
K. P. our share of 40 acres, say 30 tons, at 3 c.,	1,800
" " " 2400 galls. molasses, at 15 c.,	288
Increase live stock, 100 head,	375
Nett value King's contract, 50 acres, at 3 c.,	1,585
Additional 3-4 Lindsey's crop, say 3-4 of 35 tons, nett,	800

\$14,174  
7,399.60

Deduct expenses per Dr. side,

\$84,680 at 8 per cent. pays,	\$6,774.40
30,000 Value store and wooden wharf, Oahu, will rent	3,000.00
On Dr. side estimate is made to Dec. 9, 1845, 4 mos. from Aug.; or 1-3 of same should be transferred to crop of 1846, making a difference of 2466 53. Say	
in round sum,	2,100.00
26,250 at 8 per cent. earns \$2100	

---

\$140,930

100,000 Value contract in above estimate. (Belgian.)

---

\$240,930 in 10 annual payments, at 8 per cent. interest.

If sugar be estimated at 4 c., and molasses at 18 c.,  
which is surely a low and fair valuation, it would in-  
crease the \$4069 66, or to

---

4,069.66

\$199,300 75 at 8 c. earns  
100,000 Contract.

---

\$15,944.06

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\$299,300 75

There is not in the above any allowance for increase of nett income though there is no reason why it should not increase after all reasonable allowance is made for all needful outlay for buildings &c. The "Peck & Co." estate is not valued above; it costs us about \$3000. and may be made to pay 8 per cent. nett on 16 to \$20,000 in two or three years.

Lindsey's place estimated above at \$10,833.

Canal owes us say, \$1,200.



## No. 3.

FILED BY LADD &amp; CO.

HONOLULU, April 16, 1845.

DEAR SIR:—We find, contrary to our expectations, an indisposition on the part of our creditors to enter into the propositions which we have submitted to them.

We shall therefore not make any further attempts to procure signatures thereto.

Perhaps we need not detail many of the reasons why our creditors hold back, for we are convinced that your influence would be exerted to restore and increase a confidence in the Government, instead of multiplying reasons for doubt and hesitation to influence public opinion against this Government.

Our agricultural interest is necessarily so much exposed to and affected by the influence of those in power, that until some fixed policy is adopted, and liberal encouragement offered, it is, especially judging from the past, quite too hazardous a business for any prudent person to engage in.

With such views, some of our creditors are unwilling to increase their risks that are thus exposed. They do not perceive in the course pursued by H. H. M.'s Government, any sure indication or guarantee that would warrant the investment of capital to be thus exposed, and they are rather fearful, from the results of past experience, that any measure or act designed by them to aid the particular enterprise of any public-spirited and enterprising foreigners now residing among us, and through such foreigners indirectly contributing to the prosperity of H. H. M.'s Government,—would finally result in the most disastrous consequences to the best interests of the nation, as well as of those concerned.

Apart from all that has been or may be stated *pro* or *con*, in regard to the claims which we feel we have upon the liberal consideration of His Majesty's Government, and fully aware of all that may be stated adverse to our present proposition, we submit it, as advantageous both to His Majesty's Government and ourselves.

We shall feel ourselves unworthy of any consideration or merit in His Majesty's estimation, if our experience, our connections and correspondence did not warrant us in the conclusion to which we have arrived, viz: That the interests of His Majesty's Government are so far, and of propriety involved in the enterprise and interests of our house, that it is advisable and necessary to make such arrangements as that the fixed purpose and natural design of such pursuits as our house has more than all others for the last ten years attempted to accomplish may succeed.

We would therefore submit to the consideration of His Majesty's Government, that it purchase of us our interest in Koloa, and our premises in Honolulu, upon the following basis, to wit, For the sum of \$            or, the Government to choose one person, and we another, and those two to choose a third one, who shall, after attending to the statements which we may offer, and upon due consideration thereof,

affix a value to said property. The time of payment to be made by H. M.'s Government, (by scrip, bearing 12 per cent. interest,) shall be determined by the direct parties, the longest time of credit not to exceed eight years.

Reserving to ourselves the right at any time within      years to take full possession of all said property, by paying to His Majesty's Government the principal and interest of any sums advanced on the purchase of said estate.

In view of such an arrangement, we are prepared to offer such statements as we believe to be just and correct, and in addition, to offer our services to His Majesty's Government upon such terms as we may agree.

We have the honor to be sir,  
Your most obedient servants,

LADD & CO.

WM. RICHARDS, Esq.

---

J.

FILED BY LADD & CO.

MR. HOOPER TO MR. RICHARDS.

SATURDAY EVENING, April 26, 1845.

MY DEAR SIR:—Regarding the proposition which I made to you to-day, I wish you to distinctly understand, that it emanates from me alone, and it is yet to be ascertained, (should it be favorably entertained by the Government) whether Mr. Ladd will accede to it under all the circumstances which at present exist relative to the "Contract." Nevertheless, I wish to be able to say, should it ever become necessary, that I was willing to surrender *all*, if by so doing I could pay my debts; and I wish to be able to say too, if in our laudable and honest endeavors to pay our debts, the original contract should fall into the hands of the Governor of Tahiti, or the French Government, and in consequence thereof, these Islands are filled with Jesuits, that the sin will not lay at my door.

In the event of the Government acceding to my proposition, it is yet to be ascertained whether the creditors will come into a measure which will keep them out of their dues for *ten long years*.

Desiring as I do that the Government shall not in any way commit itself, I could not conscientiously recommend the payment to be made in annual instalments. That difficulty, however, I imagine could be easily surmounted after the first year. The proposition which I submit is this:

The Government to issue scrip bearing 8 per cent. annual interest, payable to bearer in ten years from its date, for the sum of \$150,000; of this sum say \$20,000 will belong to Government, leaving \$130,000 to be provided for by Government. \$80,000 of this balance the Government will be enabled to buy up within five years, at 25 per cent. discount, gaining thereby, \$16,000, so that the actual sum which the

Government will be obliged to *pay* for all our property and interests, contracts, etc., will be only \$114,000, and this after the expiration of ten years. Within five years from this date, our premises and wharf lots in Honolulu will command at least \$30,000 at auction, which will reduce the \$114,000 to \$84,000. Now if our interests at Koloa, and all our various contracts with this Government are not worth to this Government the paltry sum of \$84,000, then the Islands are not worth a thought. Why, I believe that Dr. Judd assisted by Mr. Ladd would raise the whole sum in 18 months, from sources not now thought of.

Quite an amount of this scrip would go to persons permanently settled in this country, and I conceive it an object for this Government to secure their good feelings in every possible way. A large amount would go to the United States, and the holders thereof would deem it for their interest to do everything in their power to promote the welfare of the Islands. Indeed, should the scrip be issued, I should cause a sham public sale of \$10,000 worth of it to be made in New York, buying it in at a premium.

It is to be presumed that in the event of the sale of any large and valuable property by the Government, and payment to be made in the above scrip, that the property will bring one quarter more. That is to say, supposing our property in Honolulu to be put up at auction, payment to be made in cash or scrip; in such an event the person desirous of becoming in possession of the property would be enabled to buy the scrip on a year's credit, at 25 per cent. discount, which would enable him to bid as high as \$40,000, and he would then receive 6 or 8 per cent. interest on the *cash* invested.

There is one other light in which the assumption of the debts of Ladd & Co. by this Government, (considering the objects had in view in contracting them) ought to be viewed. That is, the magnanimity of the act, and if publicity should be given to it abroad, I do not know in what other way so much character could be given to the King's Government. It would speak volumes of itself, and it would in all probability give more confidence to those who might entertain the idea of entering into agricultural operations here, than all the other inducements which the Government could hold out. The public, here and abroad, would see that the agricultural interests of the nation are under the particular and special protection of Government; and, as it has been established by the ablest political economists of every age, that on the cultivation of the soil depends the prosperity of a nation, it would show that the rulers of this nation know its true interests.

In the event of an arrangement being made between the Government and Ladd & Co., a favorite plan of mine is to make Mr. Brinsmade a travelling agent in the United States, to induce respectable men with small capital to come out and take farms at the Islands; a better man for such a mission could not possibly be found.

If plantations are only to be established by men accidentally stopping at the Islands, and these men met by the failure of this and that man, in business in which they propose to embark, a long time must elapse ere the exports of the Islands will amount to much. And on the whole, it is a serious question whether the Government ought not to take steps to introduce a different class of men than mere adventurers.

The agricultural interest of the nation merits the most profound attention of its rulers; it is second to none other. Until that is in a prosperous condition, all others are secondary. Of this, however, you are already better informed than myself, and it may be considered presumptuous in me in saying so much.

With every sentiment of respect,

I am yours faithfully,

WILLIAM HOOPER

REV. W. RICHARDS, &c., &c., Honolulu.

P. S. I intended this hastily written letter to be private, but on the whole, I see no objection to your making such use of it as may appear advisable.

W. H.

K.

FILED BY J. RICORD.

#### MR. RICHARDS' LETTER OF CREDENCE.

Kamehameha III., King of all the Hawaiian Islands, to Her Majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland.

Great and good friend,

We have made choice of Sir George Simpson, Knight, Timoteo Haalilio, our private secretary, and member of the House of Nobles, and Rev. William Richards, as our Envoys Extraordinary and Ministers Plenipotentiary to your Majesty.

They are especially charged in relation to certain important subjects which have been introduced in letters written by us to your worthy predecessor, and more to your Majesty. The Rev. Mr. Richards is perfectly acquainted with most of the facts mentioned in those letters, and knows all our views and feelings and wishes in relation to them.

They are all well informed of the relative interests of the two countries and of our sincere desire to cultivate and strengthen the friendship and good feeling which has existed between us; and from a knowledge of their probity, fidelity and good conduct, we have entire confidence that they will render themselves acceptable to your Majesty by their persevering endeavors to preserve and advance the interests and happiness of both nations.

We therefore request your Majesty to receive them favorably and to give full credence to whatever they shall say on the part of our kingdom, and most of all when they shall assure you of our friendship and wishes for the prosperity of your Majesty and your Majesty's subjects.

And we pray the Almighty God to have you, our great and good friend, in his holy keeping.

Written at Lahaina, Island of Maui, Hawaiian Archipelago, the eighth day of April, Anno Domini, one thousand eight hundred and forty-two.

By your good friend,

[L. S.]

KAMEHAMEHA III

KEKAULUONI, Premier of the Kingdom.

FILED BY J. RICORD.

## MR. RICHARDS' POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS, that I, Kamehameha III., King of all the Hawaiian Islands, have constituted, ordained and made, and in my stead and place put, William Richards, a citizen of the United States; and by these presents do constitute, ordain and make, and in my stead and place put the said William Richards, to be my true and lawful attorney, for me and in my name and stead to ask, demand, levy, require, recover and receive of and from all and every person or persons whomsoever the same shall and may concern, all sums of money, debts, goods, wares, merchandize, effects and things whatsoever and wheresoever they shall and may be found due, owing, payable, belonging and coming unto me, the constituent, by any ways and means whatsoever.

And moreover, for the well being of my Government, and for divers other good causes and considerations, I have appointed, and by these presents do appoint, the said William Richards, who, though a citizen of the United States of America, is now in the employ of my Government, my special agent for the purpose of negotiating within the United States of America, Europe, or any other place he may visit, a loan for and in behalf of my Government, to any amount not exceeding fifty thousand dollars, in such a manner as in his judgment shall best subserve my interest, hereby authorizing him to execute such bonds or obligations as may be necessary therefor, and hereby pledge the full faith and credit of my Government for the approval of all acts of my said agent, and for the payment of the loan at the time and place which shall be stipulated by my said agent.

And my said agent and attorney is hereby further endowed with full and complete powers and perfect right to transact all and every kind of business whatsoever, for and in my stead and on my account, as fully and as perfectly in all respects and particulars, as I in my own proper person might or could do.

And he is furthermore authorized to sign my name and affix my seal of state, with which he is entrusted, to any and all documents and papers that may be required in the execution of his agency.

And he, the said William Richards, is hereby further authorized and empowered to revoke, reclaim and nullify and render void, any and every power and document heretofore given under my hand, which I in my own proper person could revoke, nullify and render void, hereby giving and granting unto my said attorney and agent full and whole strength, power and authority in and about the premises, and to take and use all means and process in law for effecting the same, and of recoveries and receipts thereof in my name to make, seal and execute due acquittance and discharge; and for the premises to appear, and the person of me the constituent to represent before any governor, judges, justices, officers and ministers of the law whatsoever, in any court of justice, and there on my behalf to answer, defend and reply unto all actions, causes, matters and things whatsoever, relating to the premises.

Also to submit any matters in dispute to arbitration or otherwise; with full power to make and substitute one or more attorneys under my said attorney, and the same at pleasure to revoke; and generally to say, do, act, transact, determine, accomplish and finish all matters and things whatsoever, on all subjects, as fully, amply and effectually, to all intents and purposes, as I the constituent, if present, ought or might personally, although the matter should require more special authority than is herein comprised, I the constituent ratifying, allowing and holding firm and valid, all and whatsoever my said attorney or his substitutes shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal of the Kingdom, on this eighth day of April, in the year of our Lord one thousand eight hundred and forty-two, at Lahaina, Maui.

KAMEHAMEHA III. [Seal.]

KEKAULUOHI, Premier of the Kingdom.

M.

FILED BY J. RICORD.

# LETTER OF P. A. BRINSMADE TO MR. RICHARDS.

CI DEVANT OFFICE OF THE HAWAIIAN LEGATION, }  
St. Paul's Hotel. }

LONDON, 18th October, 1844.

MY VERY DEAR SIR,—I have received yesterday, at the hands of Sir George Simpson, your esteemed letter of the 1st instant, and am gratified to know that you have intelligence from me through Messrs. Carr & Co. You do not, however, speak of any letters to yourself! Since I wrote you by the steamer of the 1st, I have been most of the time entirely disabled from writing by a wound in my hand, occasioned by falling upon a nail, and from which for some days I suffered severely. I left Ghent on the morning of the 11th, and reached here the same evening. That you may know the exact position of affairs in Ghent I will go into some detail.

In the first place, the gentlemen with whom I have been in relations are men of the first standing in Belgium. They are cautious, but honorable, and possessed of heavy capital. They are anxious to get the business, but will have nothing to do with the Belgian Company of Colonization, but will establish a purely commercial company on common sense principles. They wish, however, to go on to the ground—to send out a shipment to try the market and prove the existence of the properties I have to dispose of, and the correctness of the statements I have made. And they wish a guarantee that the first vessel that they are to send shall in a reasonable time be reloaded for home. I have endeavored to meet them openly and honorably, and the following extract of a letter which I addressed to Mr. Couvreur the evening before I left Ghent was in terms suggested by himself, and to which he believed he could get the formal acceptance of the gentlemen to whom I have alluded. . Mr. Couvreur is a man whom you would love, and is as descri-

ing of your confidence as Sir George Simpson. Can I say more for him? If my terms are accepted, he will probably go to the Islands clothed with diplomatic powers, though not for a residence. My letter he wished to show to the ministers and to the King, and was as follows:

"From all the conversations and correspondence which I have had with yourself and others in your city, I believe it is the serious intention of gentlemen there to engage in the business which I have proposed, and that they are disposed to enter into definite arrangements with me on fair and honorable grounds. I suppose that the object of the first expedition proposed is to test the adaptation of Belgian products to the Sandwich Islands market, and the practicability of procuring returns in Sandwich Islands products at remunerating prices, and that it is not their purpose to make a single profitable operation at my expense.

"In this view of their intentions, I propose that they shall as early as possible despatch a vessel, say a brig of 200 tons, loaded to an amount of 100,000 or 150,000 francs, with such merchandize as I shall indicate, and consigned to my house for sales and returns on account of the shippers. My house shall have a fair and just interest in the profits of both outward and homeward cargoes. I will give a satisfactory guarantee that the vessel shall be loaded within two months after her arrival at the Islands, with sugar at 1 cent of a dollar per pound, and with hides at 7 1-2 to 8 cents per lb.

"Those gentlemen, must, however, guarantee to me, that a person as well entitled to their and my confidence as yourself, shall be sent out in season to arrive at the Islands as soon as the vessel shall arrive, who shall be authorized and instructed to take possession of the properties and securities I have proposed, to convey to them either at the price of two hundred thousand dollars, or at such a valuation as shall be fixed upon the same by three disinterested persons on the spot, one to be chosen by himself, one by my house, and one by the Government of the Sandwich Islands; and that he shall have full powers to draw upon some banker in Europe of known reputation, for three quarters of that valuation, in equal amounts, at six, twelve and eighteen months from sight of bills. The payments in this form for three quarters of the value, thus determined, shall be made so soon as the properties shall be delivered, and the securities for the rights and privileges shall be ratified by the Sandwich Islands Government. They shall engage also immediately on the return of the first expedition, or on the earlier receipt of the reports of their agent, to form a joint stock company with capital sufficient for carrying out vigorously the plan of operations contemplated in my propositions, and myself and partners shall be allowed shares of stock to the value of the remaining quarter of the valuation of our conveyances, and shall each be allowed such position in the future management of the business to be pursued, as our respective qualifications fit us for.

"I cannot conceive that honorable men can require terms more honorable than these, nor can I conceive that any place on earth opens fairer prospects to the interests of Belgium on better conditions.

"Should my propositions be accepted, I would suggest that the person to be sent out should be clothed with diplomatic powers from the

Belgian Government, in order that the securities which I proposed to convey under a renewed ratification, may be supported by formal diplomatic stipulations, which should cover essentially the same ground; and he should be authorized to assure the same advantages for Sandwich Islands productions introduced into Belgium, which would be assured for Belgium productions in these Islands.

"You inform me that the late laws on differential duties authorize the Belgian Government to grant entire exemption from import duties for the products of those countries whose Government receive Belgian products free. SUCH AN ARRANGEMENT I AM PERSUADED COULD BE MADE WITH THE SANDWICH ISLANDS GOVERNMENT.

"Could I be permitted to suggest the man of my own preference of all my acquaintance in Belgium for such a mission, it would be yourself. In any event it would give me unqualified pleasure to lay before your eyes at the Sandwich Islands the interests which I have endeavored to lay before your mind here."

To that letter I am daily looking for a response, such as the gentleman gave me encouragement to expect. Some words of explanation may be needful to you.

In guaranteeing sugar at 1 cent per lb. I know that I engage to make a sacrifice; but I secure a fair interest in the profits on the sale of it in Belgium, beside a share in the profits on the outward cargo, so that I think there will be little real loss. But even supposing it a total loss, if it leads to the accomplishment of my main object, we ought not to complain. Beside they relinquish my guarantee of interest. The next point is the determination of the value of the interests conveyed. I have no fear but that a fair estimate made at the Islands by such a reference as is proposed would give us a higher value than I have named. At any rate it is but a fair way of dealing with fair men.

If my propositions are declined, there will be an end to all attempts in Belgium, and I am feeling in London my way to bring the business before some persons here if I cut from Ghent.

Should, however, I do nothing here, I don't know how I am going to get honorably out of Europe, because I have been under the necessity of valuing upon my credit with Comte de Hompesch and must pay him. Besides, I must have the means of getting home. Sufficient, however, to the day is the evil thereof. My experience thus far through a somewhat chequered scene of life, has taught me to be satisfied with present duty discharged, and to meet exigencies with resolution.

In my movements in Europe I have certainly the consciousness of having endeavored to do all my duty day by day, and I cannot feel that my vexations and delays are attributable to any neglect on my own part.

I have seen Sir George but once, and that for about five minutes. He was then excessively busy in receiving his friends and unpacking his papers. I may say to you that I felt somewhat annoyed by his saying to me, "I always knew that your arrangements with Count Hompesch would amount to nothing," when you know, as he knows, that at the time he expressed himself entirely in favor of the arrangement, and that neither you nor I would have entered into it but by his full approbation.



\* \* \* \*

I don't know that I can give you any news of your other friends. Wherever I hear your name mentioned it is in terms of cordial affection and respect.

With such let me renew to you the assurances of the sentiment under which I remain ever and everywhere,

Your obliged and obedient,

P. A. BRINSMADE.

P. S. I send this unsealed to Messrs. Cary & Co., to be forwarded to you if you are in the country, or to the Islands if you have departed thither.

N.

FILED BY J. RIGORD.

### LETTER OF P. A. BRINSMADE TO MR. RICHARDS.

BRUXELLES, (Belgium,) Dec. 31st, 1842.

MY VERY DEAR SIR,—I cannot express to you the thrilling interest with which I read the notice of the arrival of yourself and Haalilio in the United States. Only three days previously I had had a long audience with His Majesty the King of the Belgians in reference to the objects which I presume have brought you on to this side of the globe. He takes the most lively interest in the measures proposed by Kamehameha III. in his letters to the sovereigns of England and France, and had not the least doubt of being able to bring into a participation in the arrangement the other Governments of Europe having commercial interests in the Pacific. He is son-in-law of the King of the French, and uncle to the Queen of England, and is in daily personal correspondence with both these monarchs, and by them is regarded with the greatest consideration.

So soon as I saw the notice of your arrival, I informed him of the fact, and gave him my conviction that you brought plenipotentiary powers to represent His Hawaiian Majesty before the Governments of the United States, and of such countries of Europe as it might be desirable and practicable for the Sandwich Islands King to conclude treaties or contract alliances with. Whether this intelligence will induce him to suspend the exertions he would otherwise have entered upon, and which I feel certain would have been successful, I cannot say. In any event, his hearty co-operation in your purposes, and his influence, which is powerful, may be relied upon by you with unquestioning confidence. You will, however, of course proceed as if nothing was doing by him. My advice to you, from my knowledge of the feeling at the Courts of England, France and Belgium, would be to induce the Government of the United States to give an explicit authorization to their Ministers at London to represent American interests involved in the contemplated arrangement. He is deeply interested in the object, has a most benevolent heart, and has great consideration not only at the British Court but in all Europe.

London will doubtless be your "seat of operations," though it will probably be useful and necessary to visit the Courts of France, Belgium, Holland, Prussia and perhaps Russia. You must, however, make up your mind for vexatious hindrances and delays. I have been accustomed to hear loud and strong complaints against the Hawaiian Government for want of a suitable appreciation of the value of time. But I am now sure that all such complaints would be silenced by a little experience in the tardy movements of people in high places in Europe. You will find also a reluctance on the part of both England and France to any treaty that would expose either power to a liability to war, and your policy will be to negotiate for a mutual pledge to *respect* rather than to *guarantee* the independence and neutrality of the Hawaiian Government. To such a pledge there would not, in my judgment, be the least objection.

I consider it so necessary for me to see you before you enter upon the prosecution of your objects in Europe, that I shall not return to the United States until I see you or hear from you. I presume that you will hasten to England. On your arrival in London I recommend you to put up at Thompson's Hotel, 28 Cavendish Square. It is comparatively a retired situation and is at the Court end of the town, and a most respectable house. You will learn where I am should you not meet me there, by inquiring at the American Legation, 46 Grovesnor place.

I cannot give you now any detail of my movements—suffice it to say that before this will reach you I hope to have realized and remitted to the United States the funds realized from my negotiations. What I have done I am sure will gratify not only you, but the King and every friend of his Government and people.

Make my kindest regards to Haalilio. I shall embrace you with indescribable pleasure when Providence may permit us to meet. I have not a doubt of your complete success, and my prayer is and shall be, that the blessing of Him who has in his hands the hearts of Kings, may rest upon you in all your progress.

Believe me, my dear sir,

Most cordially your friend,

And most obedient servant,

P. A. BRINSMADE.

REV. WILLIAM RICHARDS.

O.

FILED BY J. RICORD.

# PASSAGES FROM LAWS OF SANDWICH ISLANDS RELATING TO LANDS, &c.

1. "Protection is hereby secured to the persons of all the people, together with their lands, their building lots, and all their property, while they conform to the laws of the kingdom, and nothing whatever shall be taken from any individual except by express provision of the laws. Whatever chief shall act perseveringly in violation of this constitution, shall no longer remain a chief of the Hawaiian Islands, and

the same shall be true of the governors, officers, and all land agents."—*Declaration of Rights, both of the People and Chiefs. Page 10.*

2. "Let all those who are called landlords and governors, and tax officers consider well what kinds of produce are suited to each particular land and to all the lands from one end of the island to the other. And they shall give special charge on this subject to the tenants of their lands, so that they may cultivate extensively all such articles as shall be profitable. The landlords shall derive their profit and loss from their own days only, and so also the King shall derive his profit and loss from his days only. And the people shall derive their profit and loss from their days. But the landlords shall strive to stimulate the people to such kinds of labor as shall be profitable to the country." *Chap. III. An act to regulate the taxes. Page 30.*

3. "No man living on a farm whose name is recorded by his landlord, shall without cause desert the land of his landlord. Nor shall the landlord causelessly dispossess his tenant. These are crimes in the eyes of the law. If any portion of the good land be overgrown with weeds, and the landlord see that it continue thus after a year and six months from the circulation of this law of taxation, then the person whose duty it is shall put that place which he permitted to grow up with weeds under a good state of cultivation, and then leave it to his landlord. This shall be the penalty for all in every place who permit the land to be overrun with weeds. The same rule shall apply to sub-landlords and sub-tenants."—6. *Respecting applications for farms, forsaking of farms, dispossessing of farms, and the management of farms.—Page 33.*

4. "Landlords, oppress not your tenants; condemn them not without a cause while they continue to do well. If a land agent do thus to his tenants, and dispossess them without a crime on their part, he shall pay a fathom swine to his tenant, and the tenant shall not be dispossessed. Wherefore, ye landlords, land agents, and sub-landlords, do not thus to your sub-tenants—take not causelessly from them the products of their lands, nor their domestic animals, nor any other article which is not given you. All the avails of your own working days are yours. There is no penalty for the landlords who confine themselves to that right."—6. *Respecting applications for farms, forsaking of farms, dispossessing of farms, and the management of farms Pages 33 and 34.*

"If any landlord wishes to transfer or lease any portion of his fields or uncultivated grounds, and the land agent object, he has a right to do so, if he designs to cultivate it himself. But if he wait a year and do not do it then the objections of the land agent become groundless and he shall pay all the loss sustained by the landlord in consequence of his objections.

"It is furthermore recommended that if a landlord perceive a considerable portion of his land to be unoccupied, or uncultivated, and yet is suitable for cultivation, but is in possession of a single man, that the landlord divide out that land equally between all his tenants. And if they are unable to cultivate the whole, then the landlord may take possession of what remains for himself, and seek new tenants at his discretion."—*Respecting applications for farms, forsaking of farms, dispossessing of farms, and the management of farms. Pages 34 and 35*

5. "All residuum lands which have been separated by the chiefs as residuums from the main plantation, district or state, are now to be restored to that portion of land to which they formerly belonged. Let the occupancy and business of each state, district, plantation and farm be clear and distinct, each by itself. Let no one take that which belongs to another, for this is the statute in relation to such persons.—If any one takes the residuum which belongs to another, then the farm of him who took the residuum shall be given to the owner of the residuum. Such is the penalty of those who seize residuums, their farm shall be given to those whose residuums were seized."—7. *Of Residuum lands.*  
Page 35

6. "It shall be the duty of those to whom the King gives lands to see that they do not establish other landlords under themselves but over the people. Let that business come to an end. The establishing of a multitude of landlords over the same tenant, the traveling of the people a great distance to the work of their landlords, and thereby leaving all the affairs of their lands in a bad condition, the harboring of a multitude of sluggards, and women too who do nothing, the chiefs and the landlords grinding their tenants, the making of feasts by higher ranks, for the purpose of getting the property of the poor; the taxing of those people who desire to do business with their landlords, and that too by the district and land agents, and without any fault on the part of the people, the landlords forcibly urging the people to trade contrary to their wishes; the unequal punishment of criminals by the judges—the proper name for those things mentioned in this section is—thievish seizure, unjust taking away, robbery, unjust taxation, unjust oppression, imposing unjust burdens—avarice. These are the wealth-destroying blasts which impoverish the kingdom. This conduct of the Governors and heads of districts, and chiefs, shall cease. Let no criminal act of the kind be done hereafter; for lo! these are the blasts of the land! Let none of the landlords under the King, and none of the land agents under them do any of all the things forbidden in this law. If any one of the persons spoken of in this edict do any of the things forbidden in this law, he shall pay all damages sustained by him to whom he does the damage, and if he continue to do thus, his fine shall be, that he shall no longer be a landholder in these islands, and he shall be fined to half the amount of the property which was sought; such is the fine of those who set aside the directions of this section." 9. *Advice to the Governors and Landlords.* Pages 39 and 40.

7. "Be it furthermore enacted in relation to lands which Kamehameha I. and Kamehameha II. gave to land agents, that after the publication of this law respecting taxation, whenever any one of those land agents dies, his heir shall render an account to His Majesty the King of the lands which belonged to the deceased, and these shall return one third of those lands to the King. According to this rule, all the lands, whether few or many of every man who dies shall be divided. But if two months elapse after the death of any person, and the heir neither present himself before the King, nor send a written notice, then the lands of the heir shall be divided equally. Hereafter, the lands of all heirs shall be divided thus, when the King is not notified if the deceased, however, had but one farm, that shall descend to his

heir. If he have two farms, then one half of one of them shall revert to the King. From this time forth, the King and his Premier must be informed of all bequests of lands, and whatever relates to the heirs.— But if the deceased have no heir at all, then his land and all his property shall be the King's. Thus it is ordained in relation to the land agents of His Majesty the King, and also in relation to the land agents under them over the common people. But the lands of orphans, widows and old men shall be protected by the land agents; let not the heirs however among the common people forget the directions of their landlords.

“If any one spoken of in this law seize the land of lawful heirs, which is protected by this law, the punishment shall be as follows: two thirds of the income of said land obtained by the new landlord in a year shall be delivered to the heir, and it shall be thus delivered each year for four successive years and then the land shall belong to the new landlord. The fine shall be the same for those who apply to the King for lands occupied by heirs of the deceased, though if the heir do better than the deceased, *his third shall not be restored to the King*. And if the deceased person have children of his own, then the King will not take the third, nor the third of him who does better than the deceased person. But if that heir had been enriched by previously being heir to another chief, the King will then take the third.”—14. *Respecting the descent of lands to heirs. Pages 47 and 48.*

“In all places which are watered by irrigation, those farms which have not formerly received a division of water, shall when this new regulation respecting lands is circulated, be supplied in accordance with this law, the design of which is to correct in full all those abuses which men have introduced.

“All those farms which were formerly denied a division of the water, shall receive their equal proportion. Those bounties which God has provided for the several places should be equally distributed in order that there may be an equal distribution of happiness among all those who labor in those places. The allowance of water shall be in proportion to the amount of taxes paid by the several lands. For it is not the design of this law to withhold unjustly from one, in order to unjustly enrich another, according to the old system which has been in vogue down to the present time. That the land agents and that lazy class of persons who live about us should be enriched to the impoverishment of the lower classes, who with patience toil under their burdens and in the heat of the sun, is not in accordance with the designs of this law. This law condemns the old system of the King, chiefs, land agents and tax officers. That merciless treatment of common people must end. If the Governor thinks proper to adopt a protective policy, let him protect all alike, and there shall be an equal division of protected articles, in order that every man may obtain the object of his desire according to the amount of his labor. Such is considered to be the proper course by this law, regulating the property of the kingdom; not in accordance with the former customs of the country, which was for the chiefs and land agents to monopolize to themselves every source of profit. Not so with this law.”—15. *Of the division of water for irrigation. Pages 49 and 50.*

FILED BY J. RICORD.

LETTER OF MR. BRINSMADE TO MR. RICHARDS, ON  
LOANS.ST. PAUL'S HOTEL,  
London, November 2, 1843. }

MY VERY DEAR SIR:

I have now to address you again on the subject of finances. My expenses in London will consume the £100 you furnished me. My payment to Maclean required the amount for which Mr. Tappan gave his name to Messrs. Baring & Co. I have therefore to provide myself in some way, and I know of no other than through you. Since the arrival of the last steamer I have made a proposition to the Hon. Hudson Bay Co., to furnish them at the Islands for their trade to Columbia River and the Russian settlement, sugar, molasses, &c., at prices lower than they could be purchased for in London, and to allow them the Oahu rate of interest on an advance here of 300 or £400 from the date of the advance to the date of the delivery of the articles which should be stipulated for. Mr. Barclay thought such a proposition would be favorably entertained by the Company, as they would be disposed to sustain the friendly feelings existing between my house and the Company's agents at Honolulu. He presented yesterday the proposition to the Governor, Sir Henry Pelly, and reports to me this morning that the Governor showed every disposition to accommodate me so far as he could in consistency with the rules by which the Company were governed. The acceptance however of such a proposition, or the granting a loan, would be inconsistent with such rules and could not be done without a special authorization from the Board of Directors. He said however, that the authorization which the Board had given to make advances to you, opened the way by which they could through you accommodate my wants, and advised that mode. Mr. Barclay put to him the question direct: "Would the company advance to Mr. Richards the further sum of 300 or £400 for the uses of Mr. Brinsmade?" He replied unhesitatingly in the affirmative; and Mr. Barclay advises me to apply to you, as my best and straight forward method of supplying my wants.

Now my dear sir, if you can extend your credit with the Company in my favor, say \$500, I will repay you for that sum at least which you advanced me in London first, and in Paris in April, and should I complete my business in Belgium in season, I will refund the whole before you leave the United States for the Islands. It is of course impossible to say how long I may be required to stay in Belgium, and it is what prudence requires that I should provide for my expenses. I pledge you for repayment, my prospects of success in my negotiations, into which I have entered with the best advice of yourself and of Sir Geo. Simpson,—the character and credit of the house of Ladd & Co., and my own faith and credit; and solemnly engage to pay this in any event but death, should I be obliged to enter the service of His Majesty as a

swine-herdsman. I do believe, that under all the circumstances of the case, the King and his advisers would one and all justify you in affording me this accommodation. I will write to my house and to Dr. Judd fully on the subject.

I shall CERTAINLY expect your answer on Monday, and shall make no effort in any other direction until after that. *I honestly believe* you will be perfectly safe, morally and pecuniarily, in enclosing to me an order for the amount named, and while you will place me and those connected with me under obligations to yourself and the Government which we shall not be likely to forget, you will at the same time be sustaining an enterprise judged by your best friends to be most highly advantageous to the nation to which you have devoted your life, and to whose welfare I believe I have made it manifest to you I am not indifferent.

On the ground of national interests involved in the objects for the prosecution of which I must have money, I believe you would be justified though all should be sunk, and I sink with it.

Waiting in equally strong hope and anxiety,

I remain, dear sir,

Your friend and obedient servant,

P. A. BRINSMADE.

P. S. Since closing this, one consideration makes me hesitate, viz: if you should decline, it will be prostrating my standing and that of Ladd & Co. with the Company, for it will be virtually saying that neither the Hawaiian Government or yourself have confidence in our responsibility. However, I have gone too far with them to go back. I commit myself to you under Providence, and wait your decision as His.

P. A. B.

& MONSIEUR MONSIEUR WM. RICHARDS, &c. &c., Hotel Meurice, & Paris.

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Q.

FILED BY LADD & CO.

LETTER OF LADD & CO. TO G. P. JUDD.

HONOLULU, April 16, 1845.

SIR:—We are desirous of having the sale advertised to take place at Koloa on the 28th inst., deferred for the present, as it is an object of great importance to us.

Will you please inform us of your decision on the subject, and oblige

Yours truly,

LADD & CO.

G. P. JUDD, Esq., Secretary of State, Honolulu.

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## No. 2.

## LETTER OF G. P. JUDD TO LADD &amp; CO.

HOME OFFICE, Honolulu, }  
17th April, 1845. }

GENTLEMEN:—I have received yours of 16th inst. in which you request, as an object of great importance to you, that the sale advertised for the 28th instant be postponed for the present.

It would afford me pleasure at all times, to promote objects of importance to you, provided they are consistent with the best interests of H. M.'s Government, and I have to request you will lay before Mr. Richards all the motives and inducements for such a postponement.

I have the honor to be, gentlemen,

Your obedient servant,

G. P. JUDD.

MESSRS. LADD & Co, Honolulu.

## No. 3.

## LETTER OF G. P. JUDD TO LADD &amp; CO.

GENTLEMEN:—Understanding from Mr. Richards that you expect me to notify you in regard to the sale of your plantation at Kaaui, I have only to say that I know of no good reason for postponing it.

The Victoria will go down to-morrow, and take as passengers any who may feel inclined to view the premises and bid upon them.

Yours most truly,

G. P. JUDD.

24th April, 1845.

## No. 4.

## SHERIFF'S NOTICE OF SALE OF LEASE, KOLOA

Public Notice is hereby given, that by virtue of a writ of *rendition exponas*, issued to me by His Excellency the Governor of Oahu, is continuation of an original levy heretofore made by me upon an execution founded upon a judgment heretofore rendered in the Court of Oahu in favor of the Hawaiian Treasury Board against Ladd & Co. of Honolulu, merchants; and upon which execution, the rents, issues and profits of a certain sugar estate at Koloa, on the Island of Kauai, were sold by my deputy for one year, from the 9th day of December last until the 9th of December ensuing.

And whereas, the said rents, issues and profits for one year, so sold as aforesaid, were not sufficient to pay up and satisfy the said execution:

I shall proceed therefore to sell at public vendue, to the highest bidder, all the residuary leasehold and term of years on the said Koloa



sugar estate, which the said Ladd & Co. still have or pretend to have therein, after the end of the year for which the same was sold on execution as aforesaid,—subject to any mortgages on the said premises, and subject to the rents yearly accruing thereon to Government.

Sale to take place on the premises, on Monday, 28th April, 1845, at 10 o'clock, A. M.

R. BOYD, High Sheriff.

HONOLULU, March 25, 1845.

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No 5.

PROTEST OF LADD & CO. AGAINST SALE OF LEASE.

Whereas, on the 9th of December, 1844, the rents accruing to, and the unmortgaged property belonging to a certain sugar plantation, situated in Koloa, Island of Kauai, and held by us, were sold at public auction by order of M. Kekuanaoa, Governor of Oahu, for the term of one year ending on the 9th of December, 1845; and whereas, by a certain advertisement, as per margin, taken from the Polynesian Newspaper, property and other valuable interests, held and owned by us on the Island of Kauai, are to be offered at public sale on the 28th proximo, and whereas, said property and interests have been sold and transferred by the sanction and with the guarantee of the Sandwich Island Government:

Therefore, we hereby, for the above and other reasons, *PROTEST* against such illegal sale, and hereby hold the Sheriff or Sheriffs whose name is affixed to said notice of sale, M. Kekuanaoa, Governor of Oahu, and the Government of the Sandwich Islands, responsible for all loss and damage that has arisen, or may hereafter arise in consequence of said notice, or the proceedings thereon, or from the sale as above advertised.

(Signed,)

LADD & CO.

HONOLULU, Oahu, S. I., April 24, 1845.

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UNITED STATES COMMISSION, }  
Honolulu, April 24, 1845. }

Personally appeared before me, William Ladd, one of the firm of Ladd & Co., and in their name and behalf, declared the foregoing to be their solemn protest against the proceedings of the Hawaiian Government in the premises related in the said instrument.

(Signed,)

GEORGE BROWN. [L. S.]

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UNITED STATES COMMISSION, }  
Honolulu, April 25, 1846. }

I hereby certify that the within instrument of protest is a true copy of the original.

(Signed,)

GEORGE BROWN, [L. S.]

No. 6.

**LETTER OF LADD & CO. TO R. BOYD, HIGH SHERIFF.**

HONOLULU, April 24, 1845.

Mr. R. BOYD, Sheriff, &amp;c., Oahu.

SIR,—Will you do us the favor to inform us what particular property or interest is to be sold at Koloa on the 28th proximo, as per advertisement in the last Polynesian, and on what conditions?

And oblige your obedient servants,  
(Signed,) LADD & CO.

No. 7.

**LETTER OF SHERIFF BOYD TO LADD & CO.**

HONOLULU, April 25, 1845.

GENTLEMEN,—The terms of sale are cash. All the particulars in regard to mortgages, nature of the terms, and ownership of Ladd & Co., so far as I am acquainted with them, will be given at the time and place of sale.

I am, Gentlemen,

Your obedient servant,

(Signed,)

R. BOYD, High Sheriff.

Messrs. LADD &amp; Co., Honolulu.

No. 8.

**LETTER OF LADD & CO. TO SHERIFF BOYD.**

HONOLULU, April 25, 1845

R. BOYD, Esq., High Sheriff, Oahu.

We again request to be informed of the conditions or terms of sale to take place, as per advertisement, at Koloa, on the 28th proximo. Your frank and proper reply to this will much oblige,

Yours truly,  
(Signed,) LADD & CO.

The following answer was received in blank enclosure.

No. 9.

**LETTER OF SHERIFF BOYD TO LADD & CO.**

I shall, pursuant to my notice, sell all right, title and interest of Ladd & Co., in the Koloa Sugar Estate at Kauai, subject to all rights and incumbrances lawfully existing thereon at the date of the sale.

This will be commensurate with the usufruct of the leasehold for the entire unexpired term subject to the existing rights of third persons other than Ladd Co.

(Signed,)

R. BOYD, High Sheriff

No. 10.

## LETTER OF SHERIFF BOYD TO LADD &amp; CO.

SHERIFF'S OFFICE, 25th April, 1845.

GENTLEMEN,—I have the honor to acknowledge receipt of your protest, dated 24th of this month, made before the United States Commissioner.

Your obedient servant,

R. BOYD, High Sheriff.

To Messrs. LADD &amp; Co., Honolulu.

No. 11.

## LETTER OF G. P. JUDD TO LADD &amp; CO.

HOME OFFICE,  
Honolulu, Oahu, 25th April, 1845. }

GENTLEMEN,—Your protest of the 24th instant has been received and entered for consideration.

I have the honor to be, Gentlemen,

Your obedient servant,

G. P. JUDD.

Messrs. LADD &amp; Co., &amp;c., &amp;c., &amp;c., Honolulu.

No. 12.

## LETTER OF G. P. JUDD TO LADD &amp; CO.

HOME OFFICE, 2d May, 1845.

GENTLEMEN,—In regard to the subject of your communication of the 30th ultimo, I have the honor to refer you to his Majesty's Law Adviser, who is instructed to do what is lawful and right in the premises.

By command of His Majesty.

Your obedient servant,

G. P. JUDD.

Messrs. LADD &amp; Co., &amp;c., &amp;c., &amp;c., Honolulu.

No. 13.

## LETTER OF G. P. JUDD TO J. RICORD.

HOME OFFICE, 2d May, 1845.

SIR,—I am commanded by His Majesty the King, to lay before you the enclosed letter from Messrs. Ladd & Co., and to instruct you to do what is lawful and right in the premises.

Your obedient servant,

(Signed,)

G. P. JUDD.

JOHN RICORD, H. M.'s Attorney General, &amp;c., &amp;c., &amp;c., Honolulu.

[ENCLOSURE.]

No. 14.

## LETTER OF LADD &amp; CO. TO G. P. JUDD.

HONOLULU, April 30, 1845.

SIR,—On the 24th of November, 1841, the undersigned entered into a contract with H. M. Kamehameha III., King, and Kekauluohi, Premier, of the Sandwich Islands, by which the right of selecting for certain purposes, within one year from the date thereof, all the then unoccupied and unimproved lands on said islands, was granted to us; which period of time for selecting lands was by a subsequent agreement, dated 13th of September, 1842, signed by the King and Premier, extended to the 24th of November, 1845.

In furtherance of the objects contemplated in the above contract, the undersigned have to request that His Majesty the King be informed that on Monday next, (5th May) at 10 o'clock, A. M., we shall be prepared to proceed to the selection of lands, and in accordance with a clause in the original contract we beg that an officer will be appointed to accompany us for that purpose.

We have the honor to be, Sir,

Your obedient servants,

(Signed,)

LADD &amp; CO.

G. P. JUDD, Esq., &amp;c., &amp;c., Home Office.

No. 15.

## LETTER OF LADD &amp; CO. TO J. RICORD.

HONOLULU, May 3d, 1845

SIR,—By a note from the Home Office of yesterday's date, we were referred to you, in regard to our communication of the 30th ultimo, of which we enclose a copy.

Waiting your notice of the same,

We have the honor to be, Sir,

Your obedient servants,

(Signed,)

LADD &amp; Co

JOHN RICORD, Esq., H. H. M.'s Attorney General, Honolulu.

No. 16.

## LETTER OF J. RICORD TO LADD &amp; CO.

ATTORNEY GENERAL'S OFFICE, }

Honolulu, 3d May, 1845. }

GENTLEMEN,—I have this moment received your note of this date, enclosing me a copy of your communication of the 30th ultimo, addressed to his Excellency the Minister of the Interior, in relation to some contract said to subsist between His Majesty and yourselves, under

which you claim the right to select certain lands. You have signified in that communication your readiness to proceed to such selection on Monday next, 5th instant, at 10 o'clock A. M. And you request that an officer may be appointed by His Majesty to accompany you for that purpose.

His Majesty, in view of the communication, a copy of which you have enclosed, has been pleased to instruct me "to do what is lawful and right in the premises;" which instruction is very comprehensive, and includes all that you could reasonably require of the officer appointed in pursuance of your request, while it imposes upon that officer a moral responsibility, which should make him solicitous to act understandingly. Being unacquainted with the contract to which your note alludes, or if such a contract in fact exists, what can be required of His Majesty under it, I have respectfully to request, before proceeding to act in concert with you, that you will exhibit to me your contract, in order that I may have no doubt of its authenticity, and that you really possess the rights under it to which you lay claim.

I am, very respectfully,

Your obedient servant,

(Signed,) JOHN RICORD, H. M.'s Attorney General.  
Messrs. LADD & Co., Honolulu.

No. 17.

LETTER OF LADD & CO. TO J. RICORD.

HONOLULU, May 3d, 1845.

SIR,—Yours of this date is this moment received.

In regard to "some contract under which we claim the right to select certain lands," we beg to refer you to the original copy document, possessed by H. H. M., for such information as you seem disposed to ask of us.

G. P. Judd, Esq., has a copy of the contract to which we refer you (if necessary) for the conditions which we again request of you, on the part of H. H. Majesty's Government, to fulfil our note of the 30th.

We have the honor to be,

Your obedient servants,

(Signed,) LADD & CO.  
JOHN RICORD, Esq., H. H. M.'s Attorney General.

No. 18.

LETTER OF J. RICORD TO P. A. BRINSMADE AND OTHERS.

ATTORNEY GENERAL'S OFFICE, }  
Honolulu, 3d May, 1845. }

GENTLEMEN,—Your letter of this date does not satisfy the demands of mine, to which it purports to reply. I requested to be shown the

contract under which you set up a claim to select lands in this kingdom on Monday, the 5th inst., at 10 o'clock A. M., and under which contract you alledge yourselves entitled to the presence of one of His Majesty's officers. His Majesty has appointed me to meet the proper lawful demands of your letter. In order to do so, I am bound first to satisfy myself that you possess a contract warranting selections.

You have in reply to my request referred me to the supposed copy of what you term a contract, said to be in the keeping of his Excellency, the Minister of the Interior. But this does not meet the object of my request, which was to know whether you possess any such instrument. If you do not, Mr. Judd's possession of a counterpart would not avail you in law to avail yourselves of it. You must possess the contract yourselves, or you can claim nothing under it. This is a rule which cannot be shaken, except by showing that you have lost the original, once in your possession, or that it has been destroyed by accident or stolen from you. For otherwise it is a presumption of law that you have transferred it to some third party, if it was assignable, and inasmuch as you have done this you have clearly ceased to have any rights in such an assigned contract as against the party of the other part. The assignee then acquires all your rights, and among the rest the right to select the lands under it to the extent you had them and no further. The parties to an assignable contract are intended to be changed by the party who has the right of assignment. This is clearly contemplated by the other party who has a right in fulfilling an assignable contract, to know at the time that he is fulfilling it to the proper person. The assigner has no right whatever to call for the incipient fulfilment of a transferred contract except by the written authorization of the assignee. It is presumed that if you ever held a transferable instrument from His Majesty, purporting to be a contract of the nature you alledge, and if you cannot produce it on demanding fulfilment, then that you have transferred that contract, and possession of a duplicate by His Majesty would not avail you. This was one reason of my requesting you to produce your contract.

Another reason for my request was that I might satisfy myself of the genuineness of the contract which you pretend to hold.

Another reason was that I might be satisfied of its validity as a contract. Every instrument containing mutual promises and covenants is not a contract. Some may be void for the want of formality or of consideration; some may be against express law or against sound morals—or against the public policy of a state; or, emanating from a sovereign, agreements may sometimes be against the rights and liberties of his subjects, secured to them in the Constitution. A mutual agreement may thus be void, *ipso facto vel ipso jure*, and be no contract, but a *nudum pactum* on its very face.

Such considerations of validity and of nullity in any instrument, may happen to hold, giving you the claims to select land in this kingdom which you have set up, are after considerations. These may arise between this government and yourselves, if you in fact hold and produce the instrument, and it shall be found formal and ostensible on all other respects. Or such considerations may arise between the government and your assigns. But they cannot arise until you or your assigns produce a written voucher for such claims.

Under the strict wording of the instructions given to me by his Majesty's Government, I must move cautiously in the fulfilment of what I do not believe to be a contract at all; and I must before moving know that you not only hold such an instrument as you alledge to, that you have not by transfer rendered His Majesty accountable to some other person for its fulfilment, and that all the forms of law have been complied with in making it, but also that it is a contract and not a nullity. Were I not to satisfy myself on these points before proceeding to fulfil your requests, I should make myself justly amenable for gross misconduct, and punishable by the King and nation whose minister I am.

I also avail myself of this occasion as a conservator of the constitution and laws of the Hawaiian Islands, which I have sworn to support and to preserve inviolate, to caution you gentlemen, that any attempt on your part to select and occupy lands with the object intended in your letter, without the knowledge and concurrence of His Majesty's Government, will be regarded as a trespass upon His Majesty's domain, and be punishable by this Government as such. This formal caution becomes my official duty to give you although I am far from believing it necessary.

I have the honor to be, gentlemen,

Your obedient servant,

(Signed,) JOHN RICORD, H. M.'s Attorney General.

Messrs. PETER A. BRINSMADE,  
WILLIAM LADD, and  
WILLIAM HOOPER.

No. 19.

LETTER OF P. A. BRINSMADE AND OTHERS TO J. RICORD.

HONOLULU, May 5th, 1845.

SIR,—We enclose for your examination, the original extension of the time agreed upon, in which we were to select the lands referred to. As this document so clearly acknowledges the existence and obligations of the original contract, of which we have a legal copy, we presume it will be deemed by you of sufficient obligation to authorize you in acceding to our request of the 30th ultimo.

We have the honor to be your obedient servants,

(Signed)

WILLIAM LADD,  
" P. A. BRINSMADE,  
WM. HOOPER,

By Ladd & Co.,

JOHN RICORD, Esq.,

H. H. M.'s Attorney General, Honolulu.

## No. 20.

**AGREEMENT TO EXTEND THE TIME FOR SELECTING LANDS.**

Whereas, it appears that an agreement was entered into, on the twenty-fourth day of November, one thousand eight hundred and forty-one, by and between the undersigned, in behalf of the Sandwich Islands Government on the one part, and Peter A. Brinsmade, William Ladd and William Hooper, merchants, on the other part, for the leasing of certain lands, for the purpose of cultivation and for various other purposes, more particularly set forth in said agreement. And as it appears by said agreement, that the various lands on which the operations are to commence, are to be selected within one year from the date of said agreement. Now, be it known unto all men that, at the request of said parties of the second part, and for various other considerations, we, the undersigned, herewith extend the time during which the selection of lands is to be made unto the twenty-fourth day of November, one thousand eight hundred and forty-five, or four years from the date of the agreement aforesaid; and we also agree to extend the time on which the occupation and improvement of the selected lands must take place until the year one thousand eight hundred and fifty-one, or ten years from the date of the agreement aforesaid, and the remaining provisions and obligations of said agreement, are in no wise to be effected by the document.

In witness whereof, we have hereunto set our hands and seals, this thirteenth day of September, one thousand eight hundred and forty-two, at Honolulu, Oahu.

(Signed)

KAMEHAMEHA III,  
KEKAULUOHI.

[L. S.]

A true copy,  
(Signed)

WILLIAM LADD.

## No. 21.

**LETTER OF J. RICORD TO P. A. BRINSMADE AND OTHERS**ATTORNEY GENERAL'S OFFICE, {  
Honolulu, 5th May, 1845. }

GENTLEMEN,—I have duly received your letter of this date, enclosing me the original of a supplemental agreement, in the following words:

“Whereas, it appears that an agreement was entered into on the twenty-fourth day of November, one thousand eight hundred and forty-one, by and between the undersigned, in behalf of the Sandwich Islands Government on the one part, and Peter A. Brinsmade, William Ladd and William Hooper, merchants, on the other part, for the leasing of certain lands, for the purpose of cultivation, and for various other purposes, more particularly set forth in said agreement. And as it appears by said agreement, that the various lands on which the op-



rations are to commence, are to be selected within one year from the date of said agreement. Now, be it known unto all men, that, at the request of said parties of the second part, and for various other considerations, we the undersigned, herewith extend the time during which the selection of lands is to be made, unto the twenty-fourth day of November, one thousand eight hundred and forty-five, or four years from the date of the agreement aforesaid, and we also agree to extend the time on which the occupation and improvement of the selected lands, must take place, until the year one thousand eight hundred and fifty-one, or ten years from the date of the agreement aforesaid, and the remaining provisions and obligations of said agreement, are in no wise to be effected by this document."

In witness whereof, we have hereunto set our hands and seals this thirteenth day of September, one thousand eight hundred and forty-two, at Honolulu, Oahu.

[L. S.]

(Signed)

KAMEHAMEHA III.,  
KEKAULUOHI.

A true copy,

(Signed)

WILLIAM LADD.

This presupposes some agreement between the parties to which it refers. It is no further a contract than as it refers to the "provisions and obligations of said agreement," which "provisions and obligations" it expressly provides, "are in no wise to be effected by" it. Not having yet been shown that fundamental agreement, I am as much at a loss as before to know my duties under it.

I cannot learn from the enclosed supplement whether the agreement referred to, legally subsists between His Majesty and yourselves, or between His Majesty and your assigns, or whether it subsists at all as a contract. How can I satisfy myself on those points without seeing the agreement referred to? Will you be pleased to favor me with sight and perusal of the agreement on which the enclosed extension is founded.

You must be aware that should the original agreement be valid and assigned, any rights of selection which might be derived by virtue of a subsequent extension would not be derived to you but to your assigns. You would have no right to transfer and not transfer at the same time. You might have some agreement with your assigns, to obtain for them such an extension, or you might obtain it to render the original more saleable, or you might not have been able to remit that extension to the beneficiary party in interest.

I deny your right to make any selections whatever, under the mere supplement herein copied. I also deny, until convinced to the contrary, that you have any contract whatever, with His Hawaiian Majesty. I hold myself at all times ready to comply with any lawful demands you may make on the subject of your communication to His Excellency, the Minister of the Interior, of the 30th ultimo, upon proof that you are subsisting parties to a contract with His Majesty.

I have the honor to be your obedient servant,

(Signed)

JOHN RICORD, H. M.'s Attorney General.

MESSRS. PETER A. BRINSMADE,  
WILLIAM LADD and  
WILLIAM HOOPER.

No. 22.

**LADD & CO. TO J. RICORD.**

HONOLULU, May 8th, 1842.

SIR,—We have to acknowledge the receipt of your letter of the 28 inst., and in reply, have only to observe that the enclosed Protest precludes the necessity of any further correspondence between us in the subject to which it refers.

We are respectfully, your most obedient servants.

(Signed)

By

P. A. BRINSMADE,  
LADD & CO.,  
WM. HOOPER,  
WILLIAM LADD.

JOHN RICORD, Esq.,

H. H. M.'s Attorney General, Honolulu.

No. 23.

**PROTEST OF WM. LADD.**

By an agreement of two parts, dated November 24th, 1841, entered into by and between H. M. Kamehameha III., King, and Kekaulohi, Premier of the Sandwich Islands, of the first part, and P. A. Brinsmade, William Hooper, and the undersigned of the second part, the right of selection, occupancy and improvement of all the then, unoccupied and unimproved lands in the Islands, was for certain considerations, granted to said second party, and the period of one year, ending November 24th, 1842, was also granted for the selection of said lands; and by a subsequent agreement, dated September 13th, 1842, the rights of selecting said lands was extended to the 24th of November, 1845.

In virtue of said agreements and in furtherance of the plans contemplated therein, the above second party requested in writing, on the 30th ultimo, of the Sandwich Island Government, the appointment of an officer, (as specially provided for in the original contract) to assist in said selection; upon which request, the aforesaid second party was by a communication from the Home Office, directed to confer with John Ricord, H. H. Majesty's Attorney General, as being specially charged by H. M., "to do what was lawful and right, in the premises." In pursuance of the direction from the Home Office, the undersigned made application to the aforesaid John Ricord, Attorney General, etc., for the required officer, the said John Ricord, however, (acting under the authority of the aforesaid first party,) positively refused to appoint any officer, or take any steps in the matter, until the original contract of Nov 24th, 1841, was produced to him, and furthermore, threatened with punishment, as trespassing on H. M.'s domains, any attempt on the part of the party of the second part, to select lands until the aforesaid contract was submitted to, and approved of by him.

Now, therefore, know all persons, that whereas, in order to carry out and secure the primary object conditioned by the party of the sec-

ond part, in the original contract, viz: "*render the Sandwich Islands an industrious, intelligent, civilized and independent nation;*" and to allow, as further specified in said original contract, the capitalists of America, England and France, to avail themselves of the privileges granted by the party of the first part, it became necessary, and was understood by the aforesaid parties, that one of the party of the second part should proceed to those countries, taking with him, with the of the Government of the Sandwich Islands, the original contract of November 24th, 1841, and as said person is still unavoidably absent on the business growing out of said contract and other causes, sanctioned by the Sandwich Island Government, the undersigned is unable to comply with the unjust and frivolous demand of said Attorney General, to wit, the exhibition to him of said agreement.

Under the circumstances of the case, the undersigned hereby makes in behalf of himself and all concerned, this solemn protest against the Government of the Sandwich Islands and all concerned, and until the just and equitable conditions and provisions of the aforesaid contracts are fulfilled and complied with by the party of the first part, he holds the aforesaid government responsible in the sum of *one thousand dollars per diem* damages; and furthermore cautions all persons against the leasing or occupancy of any lands (which were unoccupied or unimproved on the 24th of Nov. 1841) from the Government of the Sandwich Islands during the existence of said contract, or until after its expiration in the year 1951.

Done at Honolulu, Oahu, Sandwich Islands, the 7th day of May, 1845.  
(Signed,) WILLIAM LADD.

UNITED STATES COM. AGENCY, Sandwich Islands.

I William Hooper, acting U. S. Commercial Agent, hereby certify the within to be a true copy of the original protest now on the records of this office.

In testimony whereof, I have hereunto set my hand and seal, this 9th day of May, 1845.

(Signed,)

WILLIAM HOOPER,  
Acting U. S. Commercial Agent.

No. 21.

LETTER OF J RICORD TO LADD & CO.

ATTORNEY GENERAL'S OFFICE, }  
Honolulu, May 10, 1845. }

GENTLEMEN,—I have duly received the copy of a protest made on the 7th inst. by one of you before the other which you enclosed me under date 8th instant, "*in reply to mine of the 6th,*" and which you so far consider a reply to mine of that date (unanswered) as to hope it will "preclude the necessity of correspondence between

us on that subject, to which my letter of that date relates." Now so far as concerns my letter to you of the 5th instant, your protest is no answer to it whatever, except as it confesses in writing that you have no contract with His Majesty, that your instrument purporting to be a contract has been completely made over to third parties, and that it is not even in the country. Any instrument existing between His Majesty and yourselves, would so far as the duplicate or part of it delivered to you is concerned, be your property or the property of your transferee, and you ought to have it when it is to be fulfilled or enforced, if you or they wish to urge the fulfillment of it. I know not that in law the other party is bound to fulfil it without presentment, and I know not that the other party is accountable for its absence from your custody.

That you assert its existence and that it is in Belgium, I readily admit, but I only admit it to be your assertion and not proof in the matter, or even the assertion of disinterested parties. I have learned from credible sources, and stand ready to prove that the instrument which you call a contract, and which you claim has been wholly transferred to third parties and that you have for considerations satisfactory to you ceased to have any rights in it. But nevertheless, as I might have been misinformed, I hoped the production on your part of the instrument in question would have removed from my mind all doubts on that subject. I am now sorry to say that what were before doubts are now by your protest reduced to certainty.

Since you have not the instrument—since the Government is not bound to take care of it in your hands—since the Government is not bound to produce it for you, or to help you produce it—since the Government is not bound to fulfil it without production—since you have transferred all your rights under it to third parties—since it might be a fraud upon those third parties were the contract valid, to fulfil it in concert with you—since it would be abetting a fraud for the Government to furnish you a copy to further an unlawful fulfillment, I am unable to discover upon what your very formidable protest rests, except upon assertion of premises, and your own written acknowledgement of inability to do what the law of all civilized nations requires to entitle you to demand the fulfillment of any contract whatever—to wit, show that you are parties to it.

Intending to press your pretensions, which have now assumed the tangible form of a protest, upon preliminaries to the more close investigation of the Government whose citizens you are, I will not enlarge here upon the grounds you have assumed, but will simply correct a few errors stated in your protest regarding the action taken by His Majesty through his Minister of the Interior, upon your communication 30th ultimo.

You state that you "requested the Sandwich Island Government on the 30th ultimo, to appoint an officer (as specially provided for in the original contract) to assist in said selections; upon which request, the aforesaid second party was by a communication from the Home Office, directed to confer with John Ricord, H. H. M.'s Attorney General, as being specially charged by H. M. to 'do what was lawful and right in the premises.'"

"In pursuance of the direction from the Home Office, the undersigned

*made application to the aforesaid John Ricord, Attorney General, for the required officer: the said John Ricord, however, (acting under the authority of the aforesaid first party) positively refused to appoint any officer, &c., &c."*

Now gentlemen, allow me to say that I do not find those facts borne out by the correspondence interchanged between us. I find on the contrary that we both distinctly understood that I had not the appointing of an officer to act with you, pursuant to your alledged agreement, but was myself appointed that officer by higher authority. That I was myself the kanaka, or man, or officer, to go with you or with your assigns, or with any other persons who had a valid and veritable contract, allowing or authorizing the selections which you pretended to have the right to make on His Majesty's Domain. If it was lawful to make the selections in concert with you, that was the duty imposed upon me. I requested to be shown your warrant for making selections, that I might know whether I should be doing what was lawful or right in going to concert with you, as proposed in your letter 30th ult. But alledging that you can show no warrant for your demand, you protest that I will not act with unauthorised persons. And you would leave the impression by your protest, that I was empowered to deputise some other officer for that purpose. I am the man appointed to concert in proper person with any person or persons who have lawfully and rightfully the claim to be concerted with, which you have set up.

The whole subject of your original letter 30th ult., has been transferred by this Government from the Home Office to the Office over which I have the honor to preside, and in complying with your request for the appointment of an officer, His Majesty has charged me with the whole responsibility of the matter alluded to. Any communications or protests or requests you may have to make therefore on that subject are only properly to be made to me, as it is through me His Majesty proposes to be held accountable on that subject; and I shall disavow the admissions or concessions, written or verbal of any other person with whom you may see fit to correspond on this subject.

It is needless to advert in this cursory manner to the exorbitance of your claim for damages, which on the part of His Majesty's Government I have hereby the honor wholly to deny, until you have exhibited some genuine and valid agreement with you, which has been broken on the part of this Government. Your protest can be easily shown fallacious and groundless, and it can be easily demonstrated that you have not the remotest pretension to damages. It would under the circumstances, be very delusive to count too largely or with too much certainty upon realizing the damages to which you lay claim, or to make any business arrangements solely resting upon them.

Whenever you can comply with my urgent request of the 5th inst., which is yet uncomplied with, I am ready to concert with you in person, for all the purposes of your demand 30th ult.

I am very respectfully,

Your obedient servant,

(Signed,)

JOHN RICORD,

H. H. M.'s Attorney Gen'l

MESSRS. PETER A. BRINSMADE, WM. LADD and WM. HOOVER.

No. 25.

## LETTER OF LADD &amp; CO. TO JOHN RICORD.

HONOLULU, May 14, 1845.

SIR,—Will you please inform us if you have, or if (within your knowledge) any officer of the Hawaiian Government has made any proposition, or terms of arrangement to us for the adjustment of any business existing between the parties, or for the purchase of our property, or any contracts or leases in which we have or claim to have an interest, as obtained from H. H. M. or the Hawaiian Government.

We have the honor to be,

Your most obedient servants,

(Signed,)

LADD &amp; CO.

JOHN RICORD, Esq.,

H. H. M.'s Att'y Gen'l, Honolulu.

No. 26.

## LETTER OF J. RICORD TO LADD &amp; CO.

ATTORNEY GENERAL'S OFFICE, }

Honolulu, 15th May, 1845. }

GENTLEMEN,—Your note of yesterday is before me. I embody from it the following request:

“Will you please inform us if you have, or if (within your knowledge) any officer of the Hawaiian Government has made any proposition or terms of arrangement to us, for the adjustment of any business existing between the parties, or for the purchase of our property, or any contracts or leases in which we have or claim to have an interest, as obtained from H. H. . M. or the Hawaiian Government.”

To this I take pleasure in replying that all matters alluded to in your communication to His Excellency the Minister of the Interior, 30th ultimo, have been referred to me by His Majesty. So far as those specific matters are concerned, no other officer of His Majesty's Government has authority to propose or arrange with you. Such propositions and terms of arrangement as your note supposes, emanating from any other officer of His Majesty's Government, would be unauthorized and not Government proposals or terms of arrangement. As for myself, I have never made you any proposition or terms of arrangement in regard to the subject of your communication 30th ult., alluded to, nor does His Majesty's Government so far recognize (until convinced to the contrary) the rights you claimed in that communication: as to feel in the least called upon to make you any proposition or terms of arrangement in regard to it.

What other business there may be existing between yourselves and His Majesty's Government which could call for proposals or terms of agreement, I know not, but certain I am that I have as yet made none such of any kind to you; neither have I been able to learn that any other authorized officer of this Government has made you any.

But gentlemen, should it be found conducive to the interests of your creditors, and promotive of the general good, to make arrangements with you for the surrender of your tangible property to Government, and the equitable payment of your debts, in a way neither burdensome nor expensive to His Majesty's Government, and should proposals of such a nature be made by you through me, I am not prepared to say that His Majesty's Government would not be induced to consider and accede to them, alike for your and your creditors' benefit.

I have the honor to be,  
Your obedient servant,  
(Signed,)

JOHN RICORD,  
H. M.'s Att'y General.

MESSRS. P. A. BRINEMADE,  
WM. LADD and  
WM. HOOPER.

No. 27.

LETTER OF LADD & CO. TO J. RICORD.

HONOLULU, May 16, 1845.

SIR,—In your communication of the 15th instant, you say,

"And should proposals of such a nature, neither burdensome or expensive, be made by you through me, (to H. H. M.'s Government) I am not prepared to say that H. H. M.'s Government would not be induced to consider and accede to them alike for your and your creditors' benefit."

We shall feel obliged to you if you will inform us if you intended to give us the impression that H. H. M.'s Government were not disposed to entertain or duly consider any proposition from us, or was it your meaning, and so to be considered by us, to encourage us to make "proposals of such a nature"?

We have the honor to be,  
Your obedient servants,  
(Signed,)

LADD & CO.

JOHN RICORD,  
H. H. M.'s Attorney General.

No. 28.

LETTER OF J. RICORD TO LADD & CO.

ATTORNEY GENERAL'S OFFICE, }  
Honolulu, 3d May, 1842. }

GENTLEMEN,—I have considered the question proposed in your letter of yesterday, founded upon the last paragraph of mine to you of the 15th, and which appears to admit of two constructions. It is however to be favorably understood as a corollary to the question pro-

pounded by you on the 14th inst., to which my letter containing it was a pointed reply.

You desired me to state whether proposals or terms of arrangement had been made to you by His Majesty's Government, to which I frankly replied in the negative, and knowing no good reason why the Government should make proposals or terms of arrangement with you unless it might be to benefit your creditors, knowing that the kind offices of His Majesty's Government had been before extended to Wm. French, then an American citizen—to Francis John Greenway, a British subject, and to several others, resident citizens and subjects of different nations, without distinction, by which the government had interposed for their relief and had relieved them from embarrassment, I thought your question of the 14th might be intended to elicit from me whether the Government was inclined to consider proposals from you, having in view the same benefit to yourselves. Yet as the inference was only collateral and indirect, the paragraph you now ask me to explain was intended simply to mean—

Although His Majesty's Government has no proposals or terms of arrangement to make you, and know of no reasons to call for such proposals or terms of arrangement with you, yet, gentlemen, if you have any inducement to offer to His Majesty's Government for assuming the payment of your debts, which would neither prove too burdensome nor too expensive, you are invited to make them known through me, when the Government, which has interposed to relieve others, will consider them attentively, with the view if possible to your relief also.

This invitation of my letter was a remote consequence of your question, or it would not have been so remotely answered. Now that the question is more directly put, whether the Government will favor equitable proposals from you for so laudable a purpose as the payment of your debts, I take pleasure in more pointedly inviting you to submit them, in order that they may be duly considered.

And have the honor to be, you obedient servant,

(Signed,)

JOHN RICORD,

His Majesty's Attorney General.

Messrs. PETER A. BRINSMADE,  
WILLIAM LADD, and  
WILLIAM HOOPER.

No 29.

# LETTER OF G. P. JUDD TO LADD & CO.

HOME OFFICE, June 12, 1845.

GENTLEMEN,—Under the pressure of pecuniary demands upon the treasury, it is my official duty to remind you that the money of Government lent you by Mr. Richards has been now due for a year and half, amounting now, with interest, to nearly \$15,000.

The wants of the treasury require that the Government should first



close its mortgage on your premises in this village, unless you can suggest some more practicable mode of relieving their wants.

But even were the treasury overflowing, which it is not, it is my bounden duty to the King to assert the right of the treasury to reimbursement, and I cannot see that the assertion of this right at this moment can injure any interest of your firm, either present or prospective.

If you think otherwise, I shall willingly receive, and carefully consider your reasons and objections, but if you acquiesce in the view now taken, I shall proceed, without farther notice, to adopt the measures necessary to the foreclosure of the Government mortgage so soon as it can be done.

I very much and sincerely regret that wants, which neither you nor I have been able to control, have rendered this alternative, in my opinion, the only one which the Government can properly adopt.

And have the honor to be, gentlemen,

Your obedient servant,

(Signed,)

G. P. JUDD.

Messrs. LADD & Co., Honolulu.

No. 30.

LADD & CO. TO G. P. JUDD.

HONOLULU, June 16, 1845.

SIR,—We have the honor to acknowledge the receipt of your communication of the 12th inst., and in reply we have to inform you that we not only decline to acquiesce in the sale of the property therein referred to, but protest against it for reasons which must appear obvious to you on referring to the convention entered into between the Sandwich Islands Government, the Belgian Colonization Company and ourselves, on the 17th of May, 1843.

We have the honor to be,

Your obedient servants,

(Signed,)

LADD & CO.

G. P. JUDD, Esq., Treasury Department.

No. 31.

G. P. JUDD TO LADD & CO.

HOME OFFICE, Honolulu, June 24, 1845.

GENTLEMEN,—Having carefully considered your letter of the 16th inst., which, in place of suggesting any means of accommodating matters, contains a protest, I have to inform you that I have handed it over to the Attorney General, who has His Majesty's commands to attend to this question, as law and honor may require.

I have the honor to be,

Your obedient servant,

(Signed,)

G. P. JUDD.

Messrs. LADD & Co.

No. 32.

## LETTER OF LADD &amp; CO. TO G. P. JUDD.

HONOLULU, July 12, 1845.

SIR,—We beg to inform you that the properties and interests sold by us to the Belgian Company of Colonization as per contract, executed in Brussels on the 17th of May, 1843, are daily suffering from neglect and inattention to the stipulations under which they are now owned.

We consider the time to have arrived, when it is necessary for us to call upon H. H. M.'s Government, as a party to the above contract, to observe its engagements to us. We therefore demand of H. H. M.'s Government the restoration of the above properties, etc., and that we be kept in the enjoyment of them in accordance with the said convention. Also, that we be paid full and equitable damages for all losses and injuries which we have sustained.

We shall expect an answer within one week.

We have the honor to be,

Your obedient servants,

(Signed,)

LADD &amp; CO.

G. P. JUDD, Esq., Home Office, Honolulu,

No. 33.

## LETTER OF G. P. JUDD TO LADD &amp; CO.

HOME OFFICE, 19th July, 1845.

GENTLEMEN,—As you expected an answer, within one week, to yours of the 12th instant, I have the pleasure of meeting those expectations herewith, and to demand that you will cease to annoy me with matters with which, as an officer of His Majesty, I have nothing to do, and that you likewise cease from demanding of the Government the fulfilment of contracts said to have been entered into by *yourselves*, and which if real are to be fulfilled by yourselves alone. My time is too much occupied to allow me to bear such unnecessary burdens, and His Majesty has directed to me to refer you to the Attorney General who is already charged to attend to the lawful demands of your letter of the 30th April last. With sentiments of consideration,

I have the honor to be,

Your obedient servant,

(Signed,)

G. P. JUDD

Messrs. LADD & Co., Honolulu.

No. 34.

## LETTER OF LADD &amp; CO. TO G. P. JUDD.

HONOLULU, July 21st, 1845.

SIR,—In reply to your note of the 12th inst., demanding to be placed in the enjoyment of certain properties, as stipulated in the convention

signed at Brussels on the 17th of May, 1843, you are pleased to inform us that His Majesty has charged the Attorney General to attend to all lawful demands made in our letter of the 30th April last.

We now beg to be informed if His Majesty has instructed the Attorney General to attend to the specific demands made by us on his Government on the 12th inst.

We have the honor to be,

Your obedient servants,

(Signed,)

LADD & CO.

G. P. JUDD, Esq., Home Office, &c., &c., Honolulu.

No. 35.

LETTER OF G. P. JUDD TO LADD & CO.

HONOLULU, 23d July, 1845.

GENTLEMEN,—Yours of the 21st instant has been received, and in reply, I have to state that I presume His Majesty has taken no notice whatever of the extraordinary demands of your letter to me of the 12th instant.

For further explanations, I refer you to Mr. Ricord.

Your obedient servant,

(Signed,)

G. P. JUDD.

Messrs. LADD & Co., Honolulu.

No. 36.

LETTER OF LADD & CO. TO G. P. JUDD.

HONOLULU, July 24th, 1845.

SIR,—On the 12th inst. we addressed you a note asking to be placed in possession of certain properties in accordance with the stipulations of the convention formed on the 17th May, 1843, by the authorized ambassadors of this Government and certain persons in Belgium, to which note we received a very uncourteous reply, informing us that the demands of our letter of the 30th of April last would, by order of the King, be attended to by the Attorney General.

On the 21st inst. we addressed you a note in reply, inquiring if the demands in our letter of the 12th inst. were also by direction of the King to be attended to by the Attorney General—to which we are informed in your note of the 23d inst., now under reply, that you “presume His Majesty has taken no notice whatever of the extraordinary demands.” Presumption in a business involving the solemnly pledged faith of the Sandwich Island Government will not answer our purpose. We request to be definitely informed if our demands of the 12th instant have been laid before the King, and if he has given special directions concerning them. If such is not the fact, and if it is not your intention

to make the king acquainted with them, we request an interview with His Majesty, as early as convenient, for the purpose of making known to him in person, the nature and reasonableness of our demands of the 12th instant.

We are respectfully, your obedient servants,  
(Signed,) LADD & Co.  
G. P. JUDD, Esq., Home Office.

## No. 37.

## LETTER OF G. P. JUDD TO LADD &amp; CO.

HOME OFFICE, 24th July, 1845.

GENTLEMEN,—Yours of this date, as well as of the 16th of June and 12th and 21st inst. are, by order of His Majesty, referred to the Attorney General, in conformity with directions which I had the honor to make known to you on the 19th instant, in the following words: "And His Majesty has directed me to refer you to the Attorney General," &c.

Your obedient servant,

(Signed,) G. P. JUDD.  
Messrs. LADD & Co., Honolulu.

P.S.—Any demands you have to make upon the Government, through the Attorney General, will be promptly attended to.

(Signed,) G. P. J.

## No. 38.

## LETTER OF G. P. JUDD TO J. RICORD.

HOME OFFICE, Honolulu, 24th June, 1845.

SIR,—I herewith pass over to you as Law Adviser of the Crown, a communication of Messrs. Ladd & Co., to which your attention is requested.

Your obedient servant,

(Signed,) G. P. JUDD.  
JOHN RICORD, Esq., H. H. M.'s Attorney General, Honolulu.

## No. 39.

## LETTER OF G. P. JUDD TO J. RICORD.

HOME OFFICE, Honolulu, 19th July, 1845.

SIR,—I herewith pass over to you, as Law Adviser of the Crown, a communication of Messrs. Ladd & Co., dated 12th July, instant, to which your attention is requested.

Your obedient servant,

(Signed,) G. P. JUDD.  
JOHN RICORD, Esq., H. H. M.'s Attorney General.

**ATTORNEY GENERAL'S OFFICE,** }  
**Honolulu, 25th July, 1845.** }

Waiting your commands in relation to the subject of which they treat,  
I have the honor to be,

(Signed,) **JOHN RICORD, Attorney General.**  
 To Messrs. LADD & Co., Honolulu.

**LETTER OF G. P. JUDD TO J. RICORD.**

SIR,—I pass over to you herewith a letter of this date, with some preceding ones, from Messrs. Ladd & Co., to which, as Law Officer of the Crown, I request your attention.

(Signed,) Your obedient servant,  
 JOHN RIGORD, Esq., H. H. M.'s Attorney General. G. P. JUDD.

**LETTER OF LADD & CO. TO J. RICORD.**

SIR,—In reply to a communication addressed by us, on the 12th inst., to Mr. Judd, Minister of the Interior, (a copy of which is hereunto annexed,) we are informed by him that you are authorized by His Majesty, the King, to attend to the business therein referred to. If such is the case, we beg your immediate attention to our letter to Mr. Judd and a compliance with the demands therein made.

We are respectfully,  
Your obedient servants,  
(Signed,) LADD & CO.  
JOHN RICHARD, Esq., Attorney General, &c., &c., Honolulu.

No. 43.

## LETTER OF J. RICORD TO R. C. WYLLIE.

ATTORNEY GENERAL'S OFFICE, }  
 Honolulu, 25th July, 1845. }

SIR,—Several communications, dated 16th June and 12th and 21st instants, addressed by Messrs. Ladd & Co., to His Excellency, the Minister of the Interior, have been transferred for reply to the department and seem to be predicated upon some contract which those gentlemen alledge to have been entered into by His Majesty's Government in Belgium.

Their several allusions are in the following words: "On referring to the convention entered into between the Sandwich Island Government, the Belgian Colonization Company and ourselves, on the 17th of May, 1843."

Again—"Sold by us to the Belgian Company of Colonization, as per contract executed in Brussels on the 17th of May, 1843. \* \*

"It is necessary for us to call upon His Hawaiian Majesty as a party to the above contract," &c.

And again—"As stipulated in the convention signed at Brussels on the 17th of May, 1843."

Being unaware if any treaty, compact or convention subsists between this Government and His Majesty, the King of the Belgians, before replying to those letters, I would respectfully request your Excellency to inform me officially whether there has been such a treaty or convention concluded, ratified and promulgated, and if so, when and what was its object.

I have the honor to be,

Your obedient servant,

(Signed,)

JOHN RICORD, Attorney General.

To His Excellency ROBERT C. WYLLIE, Minister of Foreign Relations.

No 44.

## LETTER OF R. C. WYLLIE TO J. RICORD.

FOREIGN OFFICE, July 26th, 1845.

SIR,—In reply to your letter of yesterday, I have the honor to inform you that I am aware of no treaty, compact or convention, subsisting between this Government and His Majesty the King of the Belgians.

His Excellency Count Goblet, in communicating to the Sandwich Island Commissioners, on behalf of His Majesty the King of Belgium, the recognition of the independence of this kingdom, on the 26th of March, 1844, added, "that in the present situation of things the subjects of Hawaii shall be provisionally admitted to enjoy in Belgium the treatment accorded to the most favored nations, on the condition that the same treatment shall be assured to Belgian subjects in the Sandwich Islands."

On the 27th of March, Mr. T. Haalilio and Mr. Wm. Richards, His Majesty's Commissioners then in Brussels, replied to His Excellency

as follows: "The condition upon which your Excellency is pleased to assume, is that Hawaiian subjects shall be permitted to enjoy in Belgium the treatment accorded to the most favored nations, we unhesitatingly accept, on the part of the Government which we have the honor to represent; and we pledge the Government in the assurance that Belgian subjects in the Hawaiian Archipelago shall receive there the treatment awarded to the subjects of the most favored nation."

The engagement made by this interchange of letters, and the pledge lawfully given by the Commissioners, I consider to be binding upon His Majesty, but I know of no other engagement subsisting between the two Governments.

I have the honor to be,

With great respect, sir,

Your obedient humble servant,

(Signed,)

R. C. WYLLIE.

Hon. JOHN RICORD, Attorney General, &c. &c.

No. 45.

# LETTER OF J. RICORD TO LADD & CO.

ATTORNEY GENERAL'S OFFICE, }  
Honolulu, 28th July, 1845. }

GENTLEMEN,—Your letter of the 24th has been received at this office, and attentively considered. It refers me to one addressed by you to his Excellency the Minister of the Interior, on the 12th instant, on examination of which, I find it predicated upon your several interchanges with the Home Office of the 12th, 16th and 24th June, and the 12th, 19th, 21st and 23d insts.

From all these interchanges I gather that you not only decline to acquiesce in the foreclosure at law of a mortgage lien, given by you to secure the re-payment of money lent to you in your business extremities, but that you protest against such foreclosure, and demand the return to you of the mortgaged property, which was lately sold under execution, subject to that mortgage for the payment of another debt recovered against you in the court of your domicil. This is strange in any point of view. But I cannot discover from the books that your acquiescence is at all necessary, either to the foreclosure to the mortgage, long since due, or to validate the previous sale on execution, nor that any protest you may make will be availing as a preventive to the ends of civil justice in the collection of debts.

If the mortgage to be foreclosed was given for a *bona fide* consideration—bears your proper signature—is due and is unpaid, and if the property mortgaged was yours, (you are not at liberty to accuse yourselves of fraud by invalidating your own deed) then a verdict upon those facts would authorize the court in entering up a judgment, which would authorize the sheriff to sell any property described in the mortgage.—The purchaser would fully occupy your place as to the property sold,—no further; and you could not afterwards claim the right to defend or

guard that property, nor prevent its suffering from neglect, which desire seems the burden of some of your last communications to the Home Office. Such considerations only regard the purchaser, who holds all the right, title and interest you held anterior to any such sale, subject to all the lawful demands of third parties. The purchaser might suffer it to be neglected if he pleased, without consulting you in the premises, for he knows only the judgment, execution and sheriff, and does not know the party whose property was sold. These remarks equally apply to the past sale under execution, and to any sale that might hereafter take place under foreclosure.

But your several letters to the Minister of the Interior, suppose some contract which has not yet come to my knowledge, from any official source whatever, and which I shall feel obliged to you for acquainting me with, since you lay much stress upon it as a bar to the collection of debts from you, and a legal obstacle to the sale of your property on execution.

Understanding from your letters that the contract alluded to is a convention concluded at Brussels in Belgium, I have had recourse to his Excellency the Minister of Foreign Relations, in hope of obtaining some information that would enable me to consider your letters in view of some convention or treaty stipulations to which this Government you say are parties.

The enclosed copy of a communication to me from the Foreign Office will apprise you that no convention of any kind exists with His Majesty the King of the Belgians, and this fact more than embarrasses me how to consider the claims you have set up. You will very much oblige me therefore, gentlemen, by being more explicit respecting the contract in nature of a convention, supposed in your letters to exist, and by allowing me sight and perusal of the same.

I have the honor to be,

Your obedient servant,

(Signed,)

JOHN RICORD,

His Majesty's Attorney General.

Messrs LADD & Co.

No. 46.

# LETTER OF G. P. JUDD TO J. RICORD.

HOME OFFICE, 28th July, 1845.

SIR—I have the honor to enclose you a letter from Messrs. Ladd & Co. of this day's date, with His Majesty's commands to do what is lawful and right in the premises.

Your obedient servant,

(Signed,)

G. P. JUDD.

Messrs. JOHN KNAPP, H. M.'s Attorney General, &c., &c.



## LETTER OF LADD &amp; CO. TO G. P. JUDD.

HONOLULU, July 28th, 1845.

SIR,—We are in receipt of a communication of this date, from John Ricord, H. H. M.'s Attorney General, in reply to our notes addressed to your department, under date of the 12th, 16th and 24th June, and 19th, 21st and 24th instants, which you referred to him, as also in notice of a letter which we addressed to him on the 24th instant.

We feel that we have just cause of complaint of the manner in which our letters have been treated by him, as well as by yourself, and we have to express our surprise that there is so manifest a disposition to trifle with the faith and integrity of the Government of the Sandwich Islands, upon which we have placed so much reliance.

We have entertained the opinion that just demands upon the Hawaiian Government would be met with an honest and frank disposition to satisfy them; that it would fairly and unhesitatingly fulfil its engagements, instead of attempting to shelter itself behind technicalities and evasions, until such subterfuges were found unavailing.

Mr. Ricord's frivolous attempts to prove that there is no contract, such as we claim to exist, by needlessly sending to us an enclosure from the Foreign Office, stating that there is no *treaty* between H. H. Majesty and the *King of the Belgians*, reminds us of the strange inconsistencies contained in your various communications to us, and is a poor attempt to evade matters of fact.

Why have you referred our demands to Mr. Ricord, as by the direction of the King, and yet hesitate so long to answer our question, if such reference is with the knowledge and by order of the King? and only, meantime, inform us that you presume His Majesty has taken no notice whatever of them! And if the Hawaiian Government intend to act in good faith in its dealings with us, and if the reference was directed by the King to Mr. Ricord, why does the latter studiously deny any official knowledge of the contract?

If there is a purpose to act correctly in the matter, why has not the surviving signer on the part of this Government to the Belgian convention, made his Government acquainted with it, and thus afforded the information which Mr. Ricord begs of us? and was due to your department a long time since.

We surely cannot be censured for expecting of this Government an observance of its pledges in matters in which we are concerned, and respecting such as those to which we have requested the attention of the Hawaiian Government, known as they are to all the principal officers of this Government, it does not devolve upon us at present, to prove their existence or nature, in order to fasten the obligations which they impose upon the King's Government.

Did the King's commissioners intimate to the other parties at the time of signing the convention in Brussels, that this Government would attempt to evade, or even to question its stipulations? that it would create obstacles and raise quibbles to prevent its success and impede its operations? And will it now plead its own wrong in justification?

We believe that the contract was executed by Messrs. Haalilio and Richards in good faith, and with just and honest intent, and we doubt not such was the intention of the Government which at that time became bound by the acts of its authorized agents.

The position in which that and other contracts are at present placed, and the circumstances under which they are held in Europe, are necessarily such as to prevent their production at these islands, and they are so placed by the *consent, approval and ratification of the duly empowered commissioners of the Hawaiian Government*; consequently, their exhibition at these islands at the present time cannot, with any degree of consistency, be required of us.

Among other obligations which ought to influence the Hawaiian Government to maintain its faith and integrity, in respect to our demands of the 12th inst., we may state that it is an interested party to the Belgian convention, and is entitled to a large portion of its prospective profits, definitely fixed in view of those conditions of the contract which this Government pledged itself to observe and perform.

Our demands do not involve this Government in any more trouble or expense than what its own officers have occasioned, we therefore once more beg to be informed if the King has been made properly acquainted with our demands of the 12th inst, and if *its special reference to Mr. Ricord was definitely directed by him*; otherwise, we repeat our request for an interview with the King, forthwith, in order to lay before him the nature and extent of our demands.

We have the honor to be, sir,

Your obedient servants,

LADD & CO.

(Signed,)

G. P. JUDD, Esq., Home Office.

No. 48.

# LETTER OF G. P. JUDD TO LADD & CO.

HOME OFFICE, July 28, 1845.

GENTLEMEN,—Yours of this date, which is of course all Greek to me. I have passed over to Mr. Ricord, agreeably with instructions from His Majesty, made known to you on the 19th inst., and repeated in the same words on the 24th. And I have now to inform you that His Majesty has this day confirmed those instructions, declining to allow you an audience.

I might retort upon you the complaints of your letter against Mr. Ricord by reminding you of ingratitude to His Majesty's Government for all the acts of kindness and favors which have been conferred upon your house, and for the entire failure on your part to perform the solemn promises you have made to repay money advanced you and for the war of which the treasury suffers great loss and damage, and for protesting against the use of that security which you guaranteed for the payment of \$13,800, which was borrowed of the H. B. Company *in order to lend to you on that security.*

You must also be aware of a number of other instances in which you have failed to fulfil your promises to the great embarrassment of the Government, and against which we might long ago have entered *protests* and made *demands* for extraordinary damages, had we been actuated by any other than feelings of the greatest kindness and forbearance towards you. But I forbear. If you know any thing respecting what you call the Belgian Company, you ought to inform Mr. Ricord, who, I beg to assure you, will meet in good faith all the obligations of His Majesty; but I must repeat for the last time, I hope, that I cannot be troubled with matters which do not concern me.

Your obedient servant,  
G. P. JUDD.

(Signed,) Messrs. LADD & Co., Honolulu.

#### No 49.

#### RESOLUTION IN CABINET COUNCIL ON LADD & CO.'S PRETENDED CLAIMS.

In cabinet conference, this 10th day of March, 1846, called to consider who is charged with the negotiations between this Government and Peter A. Brinsmade, William Ladd and William Hooper, relative to their claims to select and locate lands pursuant to a pretended contract with His Majesty, alledged to found what is called the Belgian Contract,

It was unanimously resolved, that whereas, by order of His Majesty, all matters affecting said claim of Ladd & Co. were referred to the Attorney General by his Excellency the Minister of the Interior,

Therefore, it is not competent to any other officer or other person connected with this Government until withdrawn from the Attorney General by His Majesty who reposed it, to receive any proposition, discuss any points or make any overtures of arrangement of compromise bearing upon His Majesty's honor or obligation so referred.

Dated, 10th March, 1846.

(Signed,)

"

"

"

"

KEONE ANA,  
G. P. JUDD,  
JOHN RICORD,  
WILLIAM RICHARDS,  
R. C. WYLLIE.

#### No. 50.

#### LETTER OF LADD & CO. TO R. C. WYLLIE.

HONOLULU, July 24, 1845.

SIR,—As there are doubts existing respecting the relations which G. P. Judd, Esq., sustains with His Majesty and his Government, we beg to be informed upon the subject.

Is he Minister of the Home Department, or of the Interior?  
 'Is he to be addressed instead of His Excellency the Premier ? &c.

We have the honor to be, your obedient servants,

(Signed,)

LADD & CO.

To His Excellency R. C. WYLLIE, Foreign Office, Oahu.

No. 51.

LETTER OF R. C. WYLLIE TO LADD & CO.

FOREIGN OFFICE, July 24, 1845.

GENTLEMEN,—In reply to your letter of this date, I have the honor to enclose copy of the Royal Appointments made by His Majesty, of which notice was given in the Government paper on the 29th of March last.

I am not aware that His Highness, the present Premier, has revoked any of the powers conferred upon Mr. Judd, with the sanction of the King, by the late Premier.

I have the honor to be, Gentlemen,

Your obedient humble servant,

R. C. WYLLIE.

Messrs. LADD & Co., Honolulu.

R.

FILED BY J. RICORD.

ENGAGEMENT TO POSTPONE ACTION ON THE BELGIAN CONTRACT.

It is hereby mutually and formally agreed between all the persons whose names are under written, viz : Thimothe Haalilio, William Richards, Peter Allan Brinsmade, le Comte de Hompesch, Chevalier Vandenberghe, De Binckum and Obert, that the documents this day jointly signed by them and recorded in conformity with the laws of Belgium, shall not be put into execution until the independence of the Sandwich Islands has been officially acknowledged by the Government of France, and if said acknowledgment be not made within one year from this date of present act, each party shall be at liberty to annul that contract.

It is also agreed that the ratification of the Council General must be given within one month after the acknowledgment forementioned, or else the contract above alluded to shall be annulled.

In faith whereof, we have hereunto affixed our signatures, at Brussels, the sixteenth day of May, in the year of our Lord eighteen hundred and forty-three.

Approuvé l'écriture ci dessus,

Approuvé l'écriture ci dessus,

Approved,

Approved,

Approved l'écriture,

J. DE BINCKUM.

OBERT,

WILLIAM RICHARDS,

HAALILIO,

P. A. BRINSMADE

S.

FILED BY LADD &amp; CO.

## LETTER OF MR. FOX TO MR. UPSHUR.

WASHINGTON, June 25, 1843.

—Her Majesty's Government, previous to the departure from and of the last steam-packet, had already received information, not officially, of the provisional occupation of the Sandwich Islands in the name of Great Britain, by the officer commanding H. B. Carysfort.

It is directed by the Earl of Aberdeen to state to you for the information of the Government of the United States, that the occupation of the Sandwich Islands was an act entirely unauthorized by Her Majesty's Government, and that with the least practicable delay, due inquiry be made into the proceedings which led to it.

The British Government had already announced to certain commissioners who arrived in Great Britain in March last, on the part of the Government of the Sandwich Islands, that Her Majesty had determined to recognize the independence of those islands under their present chief. That determination Her Majesty's Government intend to adhere to. At the same time, however, it is right it should be understood that the Government equally intend to engage, and if necessary to compel the chief of the Sandwich Islands to redress whatever acts of injustice have been committed against British subjects by that chief, or by his ministers or agents, either arbitrarily or under false color of proceedings.

Instructions which, during the past year, were addressed by Her Majesty's Government to the British Consul residing in the Sandwich Islands, and to the naval officers employed on the Pacific station, enjoin those officers to treat upon all occasions the native rulers of the Sandwich Islands with forbearance and courtesy; and while affording efficient protection to aggrieved British subjects, to avoid interfering harshly or unnecessarily with the laws and customs of the native government.

It has been the desire of the British Government, in regulating the course of its public servants with the native authorities of the Sandwich Islands, rather to strengthen those authorities and to give them a sense of their independence by leaving the administration of justice in their own hands, than to make them feel their dependence upon foreign powers by the exercise of unnecessary interference. It has not been the purpose of Her Majesty's Government to seek to establish a preponderance of influence in those Islands for Great Britain at the expense of that due to be afforded by other powers.

What has appeared requisite to Her Majesty's Government has been that other powers shall not exercise there a greater influence than is justly assessed by Great Britain.

I avail myself, &amp;c.,

(Signed,)

H. S. FOX.

FILED BY LADD &amp; CO.

**P. A. BRINSMADE'S AGREEMENT WITH THE BELGIAN CO.  
FOR CASH.**

Between Messrs. Peter Allan Brinsmade, acting as well in his personal name as by power of attorney for William Ladd and William Hooper, all American citizens, residing in the Sandwich Islands, on the first part:

Messrs. Count de Hompesch, President of the Committee of Directors of the Belgian Colonization Company, Sir Vandenberghe de Binckum, Secretary of the same Committee, and Louis Henry Chas. Obert, General Agents of the same company on the second part: all three acting for and in the name of the company, according to the terms of art. 32 of the contract passed to-day, and under the reserves therein mentioned, have agreed as follows:

Whereas, by contracts passed to-day before the Notary Evenepoel, the first part has transferred to the second part certain properties, rights and privileges therein mentioned, and for which the first part has to receive in payment, besides the 250 shares to be deposited, 817 more shares fully liberated of the Royal Community of the Sandwich Islands in view to be formed.

Whereas, according to the terms of article 32, the company has the faculty to remit the price of the cession in shares or in cash according to the price of the nominal value, after the taking of possession of the abovementioned properties by the second part; the first part having proposed that the 817 shares should be included in the emission of the 4000 shares forming the first series, and that the price should be paid to him as fast as the first instalment upon the two millions five hundred thousand francs should be paid in, so as upon the first instalment of 20 per cent. he should receive 217,000 francs.

Upon the second instalment of 20 per cent. he should receive 200,000 francs.

Upon the third instalment of 12 per cent. he should receive 200,000 francs.

And upon the fourth instalment of 11 per cent. he should furthermore receive 200,000 francs.

The second part, acting in the name of the company, do accept the said proposition, and engage themselves to remit the amount of these payings in the hands of a banker to be appointed by mutual agreement, in order to be remitted at the order of Mr. Brinsmade, as soon as the taking of possession shall have taken place.

Furthermore, Mr. Brinsmade having demanded that at the moment of the first instalment out of the sum of 217,000 francs allotted to him, he should be authorized to receive directly the sum of 17,000 francs, so that the sums to be paid at the bankers should be of 200,000 francs each; the second part has granted that request, and will support it in the Council General as soon as the first instalment will be paid in, or that an agreement will be made with a banker for the emission of the first series of shares.

A certificate of the deposit of the sums above-mentioned will be sent to the first part at the time of each instalment.

There is furthermore agreed upon, that a person will be sent out by the second part for the taking of possession above-mentioned, as soon as it will be decided that the Royal Community is ready to begin operation.

Also made in double at Brussels, this 16th of May, 1843.

Approved the above writing, as well in my own name as of that founded by the powers of Monsieur the Count de Hompesch.

(Signed,)

J. DE BINCKUM.

Approved the above writing,

(Signed,)

OBERT.

Approved the above writing,

(Signed,)

P. A. BRINSMADE.

U.

No. 1.

FILED BY J. RICORD.

# LETTER OF G. P. JUDD TO J. B. DE FIENNES.

HOME OFFICE, Honolulu, May 14th, 1845.

DEAR SIR,—It is of importance to the service of the King that during your visit to Koloa, Kauai, you report to the Government upon the following points respecting the sugar estate at that place, lately belonging to Ladd & Co.

1st. The state of the buildings, repairs required, their actual value if sold for cash, their original values and probable duration.

2d. State of the machinery, its original value, sufficiency for the purposes intended, actual value if sold for cash.

3d. Quantity of land belonging to the estate, how far exhausted, cost of manuring it, value of entire plantation and interest if sold in the market for cash.

4th. Some particulars of land not belonging to the estate, but so situated as that its produce can be manufactured at the mill.

5th. Gross and nett annual amounts of the whole produce of the estate, for as many years as you can go back, distinguishing the different articles.

6th. Calculation of what the produce will be this year.

7th. Reasonable estimate how far the plantation is likely to improve in value or to fall off by the exhaustion of the soil and deterioration of buildings and machinery.

8th. Rates paid to laborers, and facility of obtaining at all times a sufficient number of laborers.

9th. Salaries, yearly, of all the officers and laborers required to work the plantation well.

10th. A plan to work it profitably, with details and explanations, showing, if possible, what nett yearly profit may be relied upon, and at how many cents per pound or gallon the produce can be raised.

It is intended that the information obtained on the above-mentioned points, be only such as you can gather by actual observations on the plantation, and inquiry of persons employed thereon or resident for many years in its vicinity.

From these sources of information I confidently trust in your good judgment to make a report which cannot fail to be valuable. Not being aware that you have any practical experience in matters of this sort, I beg to assure you that nothing unreasonable is expected at your hands.

Hoping you may succeed in this service,

I remain, dear sir,

Yours faithfully,

G. P. JUDD.

(Signed,)

J. B. DE FIENNES, Esq.

### No. 2.

#### LETTER OF G. P. JUDD TO J. B. DE FIENNES.

HOME OFFICE, Honolulu, 7th June, 1845.

SIR,—I have the pleasure to acknowledge your Report on the Sugar Plantation at Koloa, dated 4th inst. and shall take an early opportunity of laying it before His Majesty.

It is in contemplation to purchase of His Majesty a sugar plantation of his at Wailuku, Maui, and in order to do so with a proper knowledge of the facts relative to the plantation, it is desirable that you proceed to Wailuku, and from actual observation collect the materials for and make an elaborate report on that plantation as nearly as possible like that now presented on Koloa.

Your own good judgment will supply the defect of any further instructions.

The Hooikaika will proceed to Lahaina as soon as you have embarked.

Yours very truly,

(Signed,)

G. P. JUDD.

J. B. DE FIENNES, Esq., &c., &c., &c., Honolulu.

### No. 3.

#### LETTER OF G. P. JUDD TO J. B. DE FIENNES.

HOME OFFICE, 16th of June, 1845.

SIR,—I seize the present opportunity, per Hooikaika, to further you farther advices respecting the wishes of His Majesty's Government in relation to your mission to Maui.

After you have prepared the materials for your report on the sugar estate at Wailuku, it will be advisable for you to complete that report on the spot and transmit the same to me by the earliest opportunity. The Government desire that while at Lahaina your attention be turned to the advantages that would result from a municipality established in



the village, and that you prepare a report on the best mode of establishing it, and on whatever, in your estimation, may be requisite to render it town as orderly and well regulated as possible, with a project of ways and means to defray the expenses.

It is particularly wished to have your views upon the suppression of the use of spirituous liquors—the state of public sentiment on this subject—whether it will be possible to suppress the sale entirely—whether the licensing of one grog shop or of several would increase or decrease the evil—how it would affect the revenue—the police laws and fines—the quarantine rules, and the reasons and arguments for and against my opinion you may form on any of these topics of inquiry.

Your views also are wished upon the subject of hawking goods, clothes, &c., by seamen—the visits of residents on board ships for purposes of trade, &c.—the charges on whalers, and how they may be diminished or increased for the benefit of the exchequer without driving them away. Auctioneers licenses, market regulations, &c., &c.

You are requested to transmit from time to time to this department our report or opinions on the various matters as you prepare them, sending, if possible, a separate report on each, numbered and dated. On the receipt of your reports I shall carefully examine them, and if on perusal they suggest any new or important inquiry, I shall direct your attention to it. The Government will thus derive the greatest possible advantage from your being on the spot, and your reports when rendered in native will be, if approved, the best recommendation with the native rulers to bestow on you an appointment under them, suited to the high expectations entertained of your talents.

You must have heard that efforts of foreign origin have recently been industriously made to indispose and alarm the natives against the white men already employed by the King. The Government have for some time been in possession of letters and declarations denouncing the promoters of this new agitation, and throwing suspicion on some of the protestant missionaries.

If you can obtain any tangible information upon the subject of who are the authors of the agitation against the Foreign Officers of the Government, who promoted the late petition against them, and how or any one of the protestant missionaries may have openly or secretly fomented these cabals, you will render an important service to the Government by consigning to me what information you can in truth, honor and duty render.

If you should find that foreigners, aliens of any class whatever, whether lay, clerical, or diplomatic, have been committing themselves to the dissemination of discontents and seditions amongst the natives, you will further oblige the Government by communicating your views upon the best and most constitutional regulations to check these evils, and prevent the protestant mission from suffering by the revolutionary propensities of one or perhaps two of its members.

I have the honor to be,

Your obedient servant,

(Signed)

G. P. JUDD.

J. B. DE FIENNES, Esq., Lahaina, Maui.

HOME OFFICE, 1st October, 1846.

I hereby certify the above to be true copies, extracted from the record of correspondence, kept in this office.

By authority of Minister of the Interior.

[Seal.]

G. M. ROBERTSON.

No. 4.

MR. DE FIENNES' REPORT.

SANDWICH ISLANDS, }  
Honolulu, June 4th, 1845. }

SIR,—According to your wishes I have, during my visit at Koloa, Kauai, taken all the information possible respecting the sugar estate at that place lately belonging to Ladd & Co.

According to your instructions my answers upon your questions will only be based upon actual observations I have been able to gather on the plantation, and upon inquiries of persons employed thereon, or residents for many years in its vicinity. The remarks of my own will be mentioned as such and quoted *remark*.

1st Question. The state of the buildings, repairs required, their actual value if sold for cash, their original values and probable duration?

The new buildings for the manufacture of sugar were erected in 1841, are in tolerable condition, and will answer for two or three years longer with a little annual repairs at the roofs.

There is another building near the manufactory, a stone store-house for sugar and molasses, with a thached roof in good condition; two large trash houses in tolerable condition; ten grass houses for natives; a dwelling house for the overseer is built of stone and lime and mortar, and cost, with the out buildings, about \$2,000—it needs some repairs. A store-house is annexed to it, it is a good stone building, has a good roof, and is in a good state.

Two blocks of stone buildings, containing 18 tenements, which are calculated to accommodate 36 native families.

There is a carpenter's and a blacksmith's shop and tool house, cost say \$100 each, all in good condition, and also a cart house cost \$100.

A stone building at the mill site known as Maulili has cost a great deal of money and is worth now say \$500, and the old boiling house at the same place worth \$100.

On what has been called the Peck place there are two dwelling houses, which with their out buildings may have cost \$3,000.

On what is called "the Stetson & Co. land," the buildings are all of grass and will not last over three years.

There is a rough made warehouse at the landing place worth \$500, and a wharf which cost \$600 in good state.

The roads and bridges on the plantation and throughout Koloa have been built by Ladd & Co. and are in excellent condition, and have been sustained by them at an annual expense of over \$100. The buildings are generally in good condition, except some grass native houses. The mill and other stone houses want some repairs at the roofs. Their

**value at present is just what it would cost to rebuild them, because they are all necessary to carry on the plantation.**

**It has been impossible for me to ascertain the original value or price of cost, but however, I shall endeavor to give it here as near as possible, according to the information I could gather on the spot.**

Mill house cost about	\$7,000
Chimney, furnaces and mason work,	2,000
Machinery, kettles, vats, water wheels, &c., and freight from United States,	7,000
Cost of setting machinery,	3,000
Forming dams, &c.,	1,000
Store house for sugar and molasses,	300
Two thrash houses,	2,000
Implements for sugar boiler,	400
Implements or manufacturing cases, for granulating sugar, &c.,	500
Dwelling house and out houses,	2,000
Store house,	1,500
Ten grass houses for natives,	750
Two blocks stone buildings,	1,800
Carpenter's and Blacksmith's shops, tool house and cart house,	400
Two buildings at the old mill side, worth now at least	600
Two dwelling houses and out houses, formerly belonging to Peck & Co.,	3,000
Native buildings on same land,	400
Dwelling houses on Lindsey's land, with out buildings and native houses,	1,250
Store house on ditto, in upper valley,	300
Warehouse at wharf worth	500
Building wharf,	600
Roads and bridges, sustained as above, cost at least	1,700
Value of stock, say 20 yoke of oxen, 10 carts, agricul- tural implements, &c.,	3,000
	<hr/>
	\$41,000

Services of one of the partners, say 4 years superintending the erection of buildings, making of roads and other improvements, must be taken in consideration; also the annual repairs or charges which cannot be ascertained.

**MEMORANDUM.**—The stone buildings are generally in good condition, and only want re-thatched roofs every three or four years—their probable duration will be from 40 to 50 years. The grass buildings are partly in good condition, and probably will, with some repairs, last a few years longer; others will not last more than two or three years. The buildings of the sugar manufactory may last another season with some repairs at the roof, but then they will require a new roof at an expense of two or three hundred dollars. In three or four years they will require *new stone walls*.

**2d Question.** State of the machinery, its original value, sufficiency for the purposes intended, actual value if sold for cash?

The machinery is all in good order, and sufficient to take in 1 1-2 ton of sugar per day on an average, without night work. It is sufficient for the present cane under cultivation, and with night work has given some days 2 1-2 tons.

The original value, as far as I could ascertain, is given here above, and is not less in value at present than the day it was set up. Its actual value if sold for cash depends entirely upon circumstances, and may vary from 10 to 50 per cent. according to the prosperous or adverse circumstances of the estate.

3d Question. Quantity of land belonging to the estate, how far exhausted, cost of manuring it, value of entire plantation and interest if sold in the market for cash?

The quantity of land belonging to the estate is not far from 900 acres, about one half of which is capable of tillage.

That part which is capable of tillage has been under cultivation for a number of years (except fifty acres which is now under cane the first time) and is very much reduced on account of not having been manured. It will require two years from the present time to make the lands produce a good crop, and it will probably require more outlay than the nett proceeds of the plantation for three years to come to get the lands, buildings, &c., in complete order, and make the plantation yield what it is capable of doing.

The proper means to obtain sufficient manure for the lands should be to have a large herd of cattle connected with the plantation, and the increase of cattle would cover the expenses of manuring the lands; but at least two years are wanted to carry that plan into execution. At present the best way to adopt until the other plan be carried into execution would be to import the guano from Peru, which would cost about twelve and a half dollars per acre at the price of fifty dollars the ton, to have it under immediate cultivation. The opinion of the planters at Koloa is that manure on a plantation properly regulated will not cost any thing, if cattle are owned by the plantation, because there are certain times when the teams are not in use and can be employed in hauling manure: one acre requires about 20 loads of manure, which would take 16 natives one day to haul and apply, when sufficiency of manure should be made in the vicinity of the mill for the use of the plantation.

One great reason why the lands are not taken care of at present is, that every year there is a different owner; for instance, this present year Mr. Burnham has sufficient manure for fifty acres of new cane, but he will not take the trouble or run the risk of the expense of planting new cane for another's benefit.

To calculate the real value of the estate if sold for cash, you must suppose that the person who intends to invest his funds, is at the same time inclined to make the necessary expenses to put the plantation in perfect order. With those conditions the present superintendent guarantees to clear a yearly nett profit of \$9,000, which at the rate of 8 per cent. will give a real value of \$112,000 if sold for cash.

4th Question. Some particulars of land not belonging to the estate, so situated as that its produce can be manufactured at the mill?

Independent of the lands held by Ladd & Co., there are about 400

acres of good land in the vicinity of the mill, of which the Government possesses 200 acres,—Mr. Tobey 100 acres,—and different natives and others, 100 acres.

There is also a marsh of excellent land, of about three hundred acres, which could be drained at a very small expense.

5th question. Gross and nett annual amounts of the whole produce of the estate, for as many years as you can go back, distinguishing the different articles?

The new mill was erected in 1841, and the superintendent told me he has no means of ascertaining the quantity produced since that time except at a great loss of time; but that the produce had been materially enhanced. Before that time, the quantity of sugar manufactured at the old mill from 1839 to 1842 amounted to about 79 tons annually, and 12,000 gallons of molasses.

6th Question. Calculation of what the produce will be this year?

The amount coming into the mill from all quarters the present year, will not vary much from 210 tons of sugar, and 25,000 gallons of molasses.

7th Question. Reasonable estimate how far the plantation is likely to improve in value or to fall off by the exhaustion of the soil and deterioration of buildings and machinery?

The plantation cannot be reduced much more than it is at present. The most of the land has been under cane for three or four years in succession, without having been manured, and will produce not enough to cover the expenses the year to come, if not taken care of immediately. The most of the buildings about the works will have to be rebuilt or materially altered within three years. The furnaces will also require to be replaced by new ones, the cost of which however is not very great.

The other buildings are permanent, and require but few repairs.

The machinery is in perfect order, and may not need any repairs for years, and then but trifling, if it is in the hands of a good superintendent.

8th Question. Rates paid to laborers, and facility of obtaining at all times a sufficient number of laborers.

The pay of natives on the estate, including their food and taxes, amounts to 12 1-2 cents per day *cash*. Laborers are not plenty, and at times it is difficult to obtain the number required to carry on the operations of the plantation.

9th Question. Salaries, yearly, of all the officers and laborers required to work the plantation well?

If the plantation was joined under one head,—that is, the mill and cultivating department were under the direction of one person, the salaries of the officers, and amount paid to laborers, would be as follows:

Pay of superintendent,	\$1,200
" 1st Assistant,	600
" 2d & 3d "	800
	<hr/>
	\$2,600

Carried forward.

Brought forward.

	\$2,600
Pay of 4th Assistant,	200
One hundred natives for mill and land,	4,000
House rent, and taxes of natives,	500
Carpenter, Blacksmith and Mason,	600
Expenses of sugar bags, and contingencies	1,100

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\$9,000

With the above officers and men, the plantation will produce annually 150 tons of sugar, at 5 cts. per lb.,	\$15,000
Twenty thousand gallons molasses, at 12 1-2 cts.,	2,500

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\$17,500

Which would leave a yearly nett profit of

8,900

REMARKS.—The foregoing calculations, given to me by Mr. Barham, superintendent at present of the works seem to me not to be quite correct, and I will point out some errors of calculation resulting from other statements given by himself. For instance, the rates paid to the natives is put down too high:

They are employed five days in the week, which at the rate of 12 1-2 cents per day, including taxes, would make the whole amount only \$3,250 instead of \$4,000,—error of 750.

The houses for the accommodation of the officers and natives are now on the plantation, therefore there would be no house rent; deduct \$500.

He is also incorrect in regard to the produce of the plantation as managed above according to his own statement, which perfectly agrees with Mr. Tobey's and Mr. Lindsey's. One hundred natives are sufficient to work the mill and raise two hundred acres of cane, besides manuring the land, and land so manured will produce easily one ton of sugar to the acre, which will give a product of two hundred tons, instead of one hundred and fifty; and the calculation should stand thus:

200 tons of sugar, at 5 cts. per lb.,	\$20,000
25,000 gallons molasses, at 12 1-2 cts.,	3,000

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\$23,000

Amount paid to officers and natives,

7,750

Nett profit,

\$15,250

10th Question. A plan to work it profitably, with details and explanations, showing, if possible, what nett yearly profit may be relied upon, and at how many cents per pound or gallon the produce can be raised?

If the plantation at Koloa should pass into the hands of a person having sufficient capital to conduct the operations with a view to increase its capability of yielding a greater revenue in a few years hence than it does at present, or heretofore has, it would be necessary or advisable to make some material alterations in the management of the estate.

First, instead of leaving the estate as it is at present, divided into

small parcels, each under the direction of an individual independent of the owners of the mill, the whole should be united and put under the direction of one individual.

Second, the land has been so long under cultivation that it will not bear much more than sufficient to cover the expenses of cultivation; is therefore very necessary that almost all of that now under cane, should be immediately ploughed up and manured, and kept clear for at least one year, when if it has been sufficiently manured, it may be again planted.

To obtain manure sufficient for the land required to be kept under cultivation, it is necessary either to have a large herd of cattle connected with the plantation, or to import the guano from Peru; the latter would be preferable in the present instance, as the manure should be put upon the land before the requisite quantity could be collected from a herd of cattle, but for the succeeding years it would be more profitable to have the cattle, as the cost of manuring, taking care of the stock, etc., would be trifling, or in fact nothing, as their natural increase would more than pay the expense.

If the cattle are to be relied upon to furnish manure, it will be necessary for the land to remain without planting for another year, as a sufficiency cannot be obtained to apply to two or three hundred acres within less than one year.

It would however, not be necessary to cease operations at the mill for more than one year, provided the proprietors of the plantation could obtain other lands in the vicinity of the mill, now in the hands of the Government, and natives for the purpose of planting during the ensuing year, to come into the mill two years from the coming fall. There is a sufficiency of land near the mill to produce 150 tons of sugar within that time.

The expense of manuring with guano has been estimated by those who are experimenting with it at \$12 1-2 per acre.

Third, there was an error committed in having the water-wheel now used, made so small that it does not give power enough to the machinery to grind cane sufficient to supply the manufactory. It would be advisable to have that remedied as soon as the mill is stopped, which can easily be done, and at but a trifling cost. *A new wheel* is not required, but an addition can be put upon the present one.

Cane juice will then be obtained, more than sufficient for the present boilers. There is another set of boilers on the plantation, which can be set up in the present boiling house, which will not be attended with much expense, as they can be heated from the same furnace now in operation.

The total cost of alterations will not exceed one thousand dollars.—It was estimated on the spot at \$800. The mill will then be able to manufacture one ton of sugar per day more than it is capable of doing at present.

This increase in the facility for grinding and boiling will admit of the cultivation of an additional quantity of land, unless the land now under cultivation yields more after having been manured than it did when first planted, say 1 1-2 tons to the acre.

The land belonging to Ladd & Co.'s estate, and that cultivated by

Tobey & Co., will whenever properly taken care of, be sufficient to furnish as much cane as the present mill when attended as suggested can manufacture, working twelve hours per day for the space of six months.

Placing the produce per acre at a low estimate, say one ton, which has been the average at a second year's crop from unmanured land, it will require 330 acres to be under cultivation the first year. It will require 170 men to cultivate this and attend the mill at the same time for six months, and to manure the land for the other six months, and 40 natives to cultivate 170 acres additional land, to replace one half the land first cultivated, which will be ground too late to produce cane for the ensuing season.

The calculation for 1847 would stand then thus:

Pay of Superintendent,	\$1,500
" Boiler,	500
" 3 Cultivators,	1,300
" 170 natives, at \$40 per year, including food and taxes,	6,800
" 3 mechanics, average pay for some years past,	700
Rent of land,	500
Sugar bags, and other expenses,	1,200
Pay of 40 natives, to cultivate the additional 170 acres,	1,600
For yearly proportion of the expense of houses for native occupation,	200
If guano is used to manure the land, it will cost at \$4 per acre,	4,000

Yearly expense, \$18,300

The cost of the alterations of the machinery, etc. ought not to be taken into a yearly account; it is a permanent investment.

A deduction should be made for the guano, as one application suffices for two or three years.

#### PROCEEDS.

330 Tons of sugar at the present price of \$100 per ton,	\$33,000
44,000 galls. molasses, at 12 1-2 cts.,	5,500
	<hr/>
	\$38,500
Deducting the expense,	18,300
	<hr/>

Leaves a yearly nett profit of 20,200  
for 1847, which at the rate of 8 per cent. would represent a capital of \$252,500.

At the present calculation, the price at cost for sugar would be 2 1-2 cents per lb., and the molasses 4 1-4 cents per gallon.

Being convinced of the urgency of attending immediately to this business, I recommend it to your early attention, and remain,

Your most obedient servant,

(Signed,)

J. B. DE FIENNES.

His Excellency, G. P. Judd,

Secretary of State for Home Department.



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V.

No. 1.

FILED BY MR. DE FIENNES.

**LETTER OF CH. GREINDL TO J. B. DE FIENNES.**

BRUXELLES, 15th July, 1840.

SIR,—I have the honor to transmit a copy of a decree of Monsieur, the Minister of Finance, under date of the 4th of this month, by the terms of which you are charged conjointly with Messieurs Veshargen and Allard, with the defence of affairs relative to the administration of the public treasury before the tribunal of the first instance and the court of appeal of Bruxelles. Accept the assurance of my distinguished consideration.

Secretary General ad interim,

CH. GREINDL.

To MONSIEUR DE FIENNES, Advocate, Bruxelles.

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No. 2.

**MR. DE FIENNES' APPOINTMENT.**

The Minister of Finances. Monsieur the Secretary General ad interim of the Department of Finances, and Monsieur the Director of the Administration of the Treasury, having been heard, it is decreed,

That Monsieur John Baptist De Fiennes, advocate at Bruxelles, shall be charged conjointly with Messrs. Allard and Veshargen, Jr. advocates of the department of Finances, with all business relative to the administration of the public Treasury, which may be brought before the tribunals of the first instance and court of appeal at Bruxelles.

BRUXELLES, July 4th, 1840.

(Signed,)

MERCEIU.

True copy.

Secretary General ad interim,

CH. GREINDL.

---

W.

FILED BY LADD & CO.

**MR. EVERETT TO MR. HILLIARD.**

LONDON, 19th September, 1842.

DEAR SIR,—At Mr Brinsmade's request, I have great pleasure in stating to you that from letters of recommendation of the most undoubted kind, and other sources of information, I believe him to be a gentleman of entire probity, of intelligence, and the most excellent general character.

He has been acting for some time as the consular agent of the United States in the Sandwich Islands. I am persuaded that confidence

may be placed in all his statements as to matter of fact, and his good judgment in matters of opinion.

I am dear sir, with great consideration,

Faithfully yours,

EDWARD EVERETT.

F. W. HILLIARD, Esq., Charge d'Affaires of the U. S. at Bruxelles.

A true copy of the original.

J. B. DE FIENNES.

## X. DR. JUDD'S APPOINTMENTS.

FILED BY LADD & CO.

No. 1.

### COMMISSION AS MEMBER OF TREASURY BOARD.

*Be it known to all whom it may concern,*

That the Council of the Kingdom have come to a definite agreement to set apart all the Government property, from one end of the Islands to the other, for such business of the Government as shall be agreed upon, and for the payment of debts, in order that the debts of the kingdom may be cancelled at once. They therefore nominated officers to receive and pay out monies, according to specific directions.

We do therefore hereby constitute you, Dr. G. P. Judd, Timothy Haalilio and John Ii, a Treasury Board for the Kingdom, and charge you to receive the Poll Tax, the Poalua money, and all money paid instead of the swine tax; also, all money paid for criminal offences, the harbor dues and duties, the land rents, and all tax money, and every kind of property which can be made use of in paying Government debts. We also hereby charge Governors, and all officers, to give you timely notice respecting such monies and such property, and then you wilt at your discretion leave it for a while, or take it into your hands immediately.

We furthermore charge you to execute this business promptly and faithfully, and in the month of April, 1843, render in writing a full account of all your doings.

In testimony whereof we have subscribed our names, at Lahaina, Maui, this 10th day of May, 1842.

[L. S.]

(Signed,)

"

KAMEHAMEHA III.  
KEKAULUOHI.

No. 2.

### COMMISSION AS TRANSLATOR AND RECORDER.

*Be it known to all men,*

We appoint Dr. G. P. JUDD, an American citizen, resident at Hon-

olulu, Oahu, Hawaiian Islands, to be Translator and Recorder for the Government, agreeably with the law passed the 12th of May, 1842.

In testimony whereof, we subscribe our names at Lahaina, this 15th of May, A. D. 1842.

[L. S.]

(Signed,)

KAMEHAMEHA III.  
KEKAULUOHI.

No 3.

*Salutations to you, Dr. G. P. Judd.*

You have been appointed Translator and Recorder for the Government, and for your support and that of your family, we consent that you be paid out of the Government money, \$760 per annum, to commence from this day.

Moreover, we instruct you to aid Kekuanaoa in your official capacity, which relates to all business of importance between foreigners.

Lahaina, May 15, 1842.

(Signed,)

KAMEHAMEHA III.  
KEKAULUOHI.

No. 4.

COMMISSION TO CORRESPOND WITH MESSRS. RICHARDS AND HAALILIO.

*Salutations to you, G. P. Judd.*

We hereby appoint you to be our officer, whose duty it is to collect correct information, and report to William Richards and Sir George Simpson, who are to act according to your words.

Honolulu, July 18, 1842.

[L. S.]

(Signed,)

KAMEHAMEHA III.  
KEKAULUOHI.

No. 5.

COMMISSION AS DEPUTY.

*Be it known to all men,*

I hereby appoint G. P. Judd my Deputy, to act as Commissioner for the regulation of affairs under the British flag.

(Signed,)

KAMEHAMEHA III.

Honolulu, February 27th, 1843.

No. 6.

# COMMISSION AS SECRETARY OF STATE FOR FOREIGN AFFAIRS.

*Be it known to all men,*

That I appoint G. P. Judd to be an officer of the Government, whose duty it is to adjust foreign affairs with the Representatives of foreign nations, who complain on account of other foreigners in matters which relate to the Government affairs. This is the office of Secretary of State for Foreign Affairs; and in case of any difficulty or business arising hereafter relating to such matters, it shall be his duty to adjust and act in relation to the same.

And in confirmation whereof, I subscribe my name, this 2nd day of November, 1843, at Lahaina, Maui.

[L. S.] (Signed,)

KAMEHAMEHA III.  
KEKAULUOHI.

No. 7.

# COMMISSION AS MINISTER OF THE INTERIOR.

I, M. Kekauluobi, the Premier of His Majesty Kamehameha III., the King of the Hawaiian Islands,

Testify and make known to you, the Chiefs and all the people under the Government of His Majesty:

Be it known to you that for the purpose of transacting in the best manner and correctly the business confided to me by His Majesty, clearly defined in the constitution and laws of the Government at the present time, and the laws which are probably to be made new hereafter, for the purpose of facilitating the offices of the Government and properly regulating the Department set apart belonging to this independent Government;

Therefore, I have appointed and chosen, agreeably with my office as by the constitution, and constitute and commission my cousin, G. P. Judd, Esquire, to be an high officer of the Government under me for all home business, regulating the interior of the Hawaiian Government of His Majesty. He shall occupy this office during my pleasure agreeably with the pleasure of His Majesty, for the good of the Kingdom in my Department, and he shall perform various business relating thereto at all times.

Therefore know all men, that I have with pleasure imparted to him certain of my powers, agreeably with the above declaration, for he is well known to have stood firm in the adjustment of the business of the Government of us two, while he held the office of Secretary of Foreign Affairs, and in his other acts these past years.

At present however, his duties in that Department are at end having been given to another.

Therefore it is proper for us two to promote him to another place,

where he may act, and he shall report and make known to us two all things (his acts) which relate to the Government.

But as some think the said G. P. Judd, Esquire, may misbehave himself hereafter; that will be with us two, (to judge) according to the constitution.

And in confirmation of these words we subscribe our names and affix the great seal of the Government, this 30th day of March, 1845.

[L. S.] Approved, (Signed,) KEKAULUOHI,  
KAMEHAMEHA III.

### No. 8.

#### COMMISSION AS MINISTER OF FINANCE.

KAMEHAMEHA III., by the grace of God, King of the Hawaiian Islands, with the attestation of the Premier,

To the chiefs and all the people subject to my Government, Greeting:

Be it known, that in order carefully and scrupulously to discharge the duties imposed on me by the constitution and laws of my kingdom, in conformity with an act of the Legislative Council organizing the Executive Ministry.

I have constituted and appointed, and by virtue of the prerogatives incident to my crown, and clearly implied by the constitution, I hereby constitute and appoint my trusty subject, Gerrit P. Judd, to be Minister of Finance of this my Kingdom of the Hawaiian Islands, during my royal pleasure, to do and perform any and all the duties set forth and described in an act of the Legislative Council to organize the Executive Departments, which are applicable to that office.

In witness whereof, I have hereunto set my hand, conjointly with the Premier, and caused the great seal of my kingdom to be affixed, this thirteenth day of April, A. D. 1846.

[L. S.] (Signed,) KAMEHAMEHA III.  
(Signed,) KRONI ANA.

### Y.

#### No. 1.

FILED BY J. RICORD.

#### EXECUTION AGAINST LADD & CO.

*To Robert Boyd, High Sheriff of Oahu,*

You are commanded to levy upon and sieze and take so much property of Ladd & Co., Merchants of the village of Honolulu, as shall be found necessary to satisfy and fully pay a judgment this day confessed by them in favor of the Treasury Board of the Hawaiian Government, for \$8,478 80, and the interest thereon from the day of the date hereof, at the rate of twelve per cent. per annum. And having done so, you are commanded to advertise and sell the same at public vendue, pursuant to law, and to apply so much of the proceeds of such

sale as may be necessary to the payment of said judgment, interests, and your costs, commissions and expenses of levy, advertisement and sale, and the balance if any, to return to said Ladd & Co., in default of junior executions, returning this writ with your proceedings thereon unto us at the end of three calendar months now current.

Given under our hand and seal, at the Fort, Honolulu, this 30th October, 1844.

(Signed,) \_\_\_\_\_  
Copy. R. BOYD.

M. KEKUANAOA.

I hereby appoint Thomas Pratt to be my Deputy for the Island of Kauai, with the sanction of the Governess, when obtained.

R. BOYD, High Sheriff.

[TRANSLATION.]

I consent to this arrangement, and charge all persons to obey the officer appointed by R. Boyd, at Kauai.

(Signed,)

M. KEKAUONOHI,  
Governess of Kauai.

## No. 2.

### LETTER AUTHORIZING R. BOYD TO PURCHASE KOLOA PLANTATION.

HOME OFFICE, }  
Honolulu, 35th April, 1845.

SIR,—In consequence of the protest and public notice of Ladd & Co. against the sale of their interest at Koloa, I have reason to fear that purchasers will be intimidated from bidding on the same.

I have therefore to request you will bid, on account of the Treasury Board, a sum not to exceed \$5,000, and oblige,

Yours,

G. P. JUDD.

ROBERT BOYD, Sheriff.

## Z.

FILED BY J. RICORD.

No. 1.

### CANAL CONTRACT.

It is hereby agreed between John Young, Governor of Maui, on the one part, and John Stetson, Esq., American Consular Agent at Maui, on the other part, that the said John Young shall cause the public market of Lahaina to be removed from its present location, to the neck of land S. E. of Kaao's house, now occupied by the said Stetson,

and the said Young shall level off and prepare the grounds and build the necessary market houses, and shall do it within three months from the date; and the said Stetson shall open a canal for boats to come from the sea up to said market, keeping an accurate account of the expenses of the same, and giving notice of the amount to the Government, and in consideration of the above expenses, every ship which sends her boat into said canal shall be taxed two dollars, and all the money raised in this way shall be faithfully paid to the said Stetson, until he has received the full amount of what he has expended, together with the interest on the same, calculating the interest at the common rate, and when the expense of the canal is refunded, it shall then be the exclusive property of the Government.

In testimony whereof, we have hereunto subscribed our names, this 30th day of June, 1842, at Lahaina, Maui.

(Signed,)

KEONI ANA,  
JOHN STETSON.

Witness, KAEŌ.

No. 2.

LETTER FROM G. P. JUDD TO M. CALKIN.

LAHAINA, 22d Dec., 1845.

SIR,—I have to request you will transmit to me for the information of His Excellency, Governor Young, whatever proofs you may have of your being owner of the canal excavated by John Stetson, under contract with Mr. Young, also a detailed account of the receipts of said canal, from the date of the contract up to the present time,

And oblige,

Your obedient servant,

G. P. JUDD.

MILO CALKIN, Esq., Lahaina.

No. 3.

LETTER FROM M. CALKIN TO G. P. JUDD.

LAHAINA, Feb. 14, 1846.

DEAR SIR,—On examining my books carefully, I find some errors in the canal account, which will make it differ materially from the rough minutes which I furnished you when here.

It will diminish the debt considerably.

I shall be down in a few days, and will give you a correct account from the beginning as far as I can from Stetson's books. Mr. Benson and myself have dissolved. Kind regards to your family.

Yours truly,

M. CALKIN.

HON. G. P. JUDD, Honolulu.

## No. 4.

[TRANSLATION.]

## WORD OF CHARGE.

In case I go to a foreign country at any future time, I hereby appoint G. P. Judd to be my agent for the transaction of all my business, and I charge him to take all my property, all my receipts, and all my leases of lands; to collect the same for me, and to pay all my debts, and the remainder he is to keep for me if I return, or for my heir if I do not return.

And I will approve all the acts of my agent G. P. Judd, which he may perform agreeably with this writing.

HONOLULU, Oahu, Hawaiian }  
Islands, July 8, 1842. }  
(Signed,)

T. HAALILIO.

Witness to the subscribing:

(Signed,) G. L. KAPEAU.

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 AA.

FILED BY LADD &amp; CO.

EXTRACTS FROM LETTERS ADDRESSED TO REV. WILLIAM RICHARDS, H. H. M.'S ENVOY EXTRAORDINARY &c., BY G. P. JUDD.

No. 1.

AUGUST 8, 1842.

MY DEAR SIR:

By the Chenamus I send you a copy of a letter just received from Sir George Simpson, on which I purpose to make a few remarks.

I need not say you will read his letter with attention. For myself, while I am favorably impressed with many of his opinions, I think some of them would, if carried out, involve the nation in ruin. The encouragement recommended to be given to capitalists, however much it might benefit the country, would I fear, at no distant period, be the subversion of the present dynasty, unless their affairs could be directed by experienced foreigners.

\* \* \* \* \*

It is evident that the intentions of Sir George are to engage in some employment at these Islands, and what is more probable than that he wishes to speculate in lands for the benefit of the Hon. Hudson Bay Company. I very much fear that that gentleman has been misled by the representations of some, to conclude that the facilities which the Islands afford for such speculations are greater than they really are. You sir, are aware, that with two or three exceptions, no large tra-



of land is unoccupied, and even those are in part stocked with cattle. Nor should the Government violate the rights of their people to please foreigners. Although land might be much more productive under new modes of agriculture, the people may not choose to adopt them or leave the possession of them to strangers, and then what will be done. Do not, I beg of you, promise what ought not to be fulfilled, and what will bring disappointment or a claim for indemnity on the capitalists.

\* \* \* \* \*

No. 2.

MAY 5, 1843.

I returned yesterday from Maui, after a month's absence, attending the Council of the King and Chiefs. I shall send you a copy of the laws enacted at this session, as soon as possible after they are published. At present I can only state; First, that a record was made of the lands owned by individuals throughout the group, and in reference to arrangements which we suppose have been, or will be entered into in Europe, a law was passed, that all leasing of lands shall be done by the proper officers of Government, that all rents of lands belonging to individuals be paid over to them, and the Government deduct ten per cent for its agency.

\* \* \* \* \*

No. 3.

MAY 8, 1843.

I visited Lahaina for the purpose of attending the Council of the Chiefs, and returned home the 5th inst. For a copy of the laws passed see enclosures. I might as well state now, that about ten weeks were spent in making a complete record of all the lands on the islands, with the name of the owner of each land affixed. It was found that little land actually belongs to the King. The Chiefs, Victoria in particular, being by far the greatest owners. In view of this, and in view of the contract with Ladd & Co., the first law was passed; you will see the bearing of it. Ladd & Co. are daily expecting Mr. Brinsmade, and will then commence operations.

\* \* \* \* \*

No. 4.

OCT. 5, 1843.

I fear you will not be here in season to assist with your English law-

yer in the adjustment of our affairs. Do come as soon as you can. The surveyor and all the other operatives ought to be provided by the company.

Bb.

FILED BY MR. RICORD.

LETTERS AND EXTRACTS FROM LETTERS ADDRESSED  
TO REV. WM. RICHARDS, H. H. M. ENVOY  
EXTRAORDINARY, &C., BY  
DR. G. P. JUDD.  
No. 1.

To WM. RICHARDS,

*Envoy Extraordinary, &c. to the Courts of  
Great Britain, the U. S. A., and France.*

SIR:—As you may have occasion in the negotiations which you are directed to open for the loan of money for the Sandwich Islands Government to use the obligation of the Treasury Board approved by the King and Premier, agreeably with the provisions of a law enacted in April last, I am instructed by His Majesty Kamehameha 3d, to enclose to you a blank, signed in due form, and when filled out agreeably with the terms of your contract, will become a government debt, pledging the faith and property of the nation.

The money thus obtained may be immediately shipped in Mexican dollars, or remitted in bills on England by some trusty person, who would draw the money at Valparaiso, and send it to these Islands.

In either case, an insurance must be effected on the specie.

I am, Sir, Yours Respectfully,

For the Treasury Board,

G. P. JUDD.

Honolulu, Sandwich Islands, Aug. 2nd, 1842.

No. 2.

SEPT. 26, 1846.

I have concluded to try the Kauai paper money for Government taxes for a short time just to see what its effects will be, and to find out the amount of the taxes on the Island.

No. 3.

Nov. 1, 1842

As there is no British Consul to act, Kekuanaoa has expressed to me

his determination to treat Englishmen with especial favor, in the multitude of police cases which are constantly occurring.

---

No. 4.

MARCH 9, 1843.

\* Have just returned from a session of the Commissioners, before whom I exhibited a schedule of accounts. Alexander Simpson was determined to find out about the sum which you placed in the hands of Ladd & Co., but I refused to give him any information on the subject on the ground that you had done the business before I came into office. He wants to make out that the Government are aiding American interests in an improper manner.

---

\* The Islands were ceded to Great Britain Feb. 25th. 1843.

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No. 5.

MARCH 13, 1843.

Should Marshall be lost, or his despatches, you will be somewhat *hema hema*, and I must try to supply the deficiency, should it occur, by this conveyance. I have sent by the "Boston," the rough draft of my letter by him. To this the King added his certificate that it had been interpreted to them by me, and was a true statement of the facts, &c. This was signed by Kekauluohi, John Young and Kekuanaoa.

---

No. 6.

JULY 4, 1843.

The Commissioners have organized a company of soldiers which they call the "Queen's Guard," sometimes the "Army," and draw on the Treasury for the sum of \$636,00 per month, besides various other items, to the great embarrassment of my department. The King and Premier on hearing of this, positively refused to allow me to pay the money. I informed the Commissioners, and away sailed the Carysfort for Maui. The King was firm and wrote me not to pay it except by force. This I informed the Commissioners. They wrote me to comply with their commands instantly, or they would put another man in

my place. The letter was brought by Lieut. Frere, in uniform and armed, and I complied.

---

## No. 7.

JULY 13, 1843.

His Lordship had enlisted soldiers which he called the "Queen's Regiment," and put upon regular pay, also a Police Corps, at an expense of \$713 per month, and on his return from Maui brought an order to me, sealed of course, from the King and Premier, to pay no more money on that account. This I communicated to the Commissioners when the Carysfort again up helm for Maui.

---

## No. 8.

AUGUST 12, 1843.

The Chiefs have held a council and passed a law respecting prisons and fetters, and juries, a law against leasing lands until your return and against giving away land at all to any foreigner.

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## No. 9.

SEPT. 18, 1843

Have you guarded the position of the King and Government in the Company, so as we shall not be responsible for the debts of the company in case of a failure? I have much anxiety on that score.

There are several mooted questions which I hope you will settle before your return such as the nationality of half breeds, position of lands held by foreigners on native tenures, their liability to be dispossessed, taxed, &c.

---

## No. 10.

Nov. 4, 1843.

On the occasion of the interview, Mr. Brown made an address which was answered by the King. Subsequently Mr. Brown required to know with what authority I was to do business, and was referred to me. Mr. Brown  
 Brown  
 repair authority, and finally it was found

necessary that I should be appointed Secretary of State, with authority [to transact] all business relative to Foreign Powers, &c. I was greatly perplexed on this subject, and accepted the office under great doubt as to the expediency of it. The Admiral however approves, and thus far all seems favorable.

---

## No. 11.

DEC. 16, 1843.

You will have heard ere this, that I am appointed Sec'y of State for Foreign Affairs. This seemed necessary for the present to do business with Mr. Brown. I of course take the Bull by the Horns. I do 'nt like the situation.

---

## No. 12.

SEPT. 10, 1844.

Ladd & Co. are so much embarrassed for want of funds that they will hardly hold out a single month longer. They owe us a great deal, I can get nothing, and what is worse, am teased constantly for the credit of Government to sustain them. Are we to have any funds from that quarter? If not, we must immediately take measures to secure ourselves. If you have authority to draw in Mexico, I hope you will not fail to bring twenty or thirty thousand dollars with you to meet their immediate wants, and as much more to pay what they owe us.

---

## No. 13.

DEC. 22, 1843.

The U. S. Commissioner is here; *not* Mr. Brinsmade. I am for the present, Secretary of State openly, and by regular appointment. He must therefore do business with me. The English are all on tiptoe with expectation that they shall have a title permanent to every inch of land they claim outright. We wait your return before we can act.

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Dd.

EVIDENCE FILED BY THE PARTIES.

No. 1.

FILED BY JOHN RICORD.

**To MESSRS. TIMOTEO HAALILIO, AND WILLIAM RICHARDS,**

**GENTLEMEN:—You are hereby commissioned as the special envoys**

of this Government to the Courts of Great Britain, France, and the United States. You are hereby authorized to transact at those Courts in our name, and on our part all and every kind of Diplomatic Business, as by instructions placed in the hands of Mr. Richards, and as may be from time to time added to or modified hereafter, the right of ratification being reserved for us.

The same powers which are conferred on you in relation to the three Governments mentioned, are also conferred on you in relation to the Government of any other nation which you may find it important to visit in order to effect the grand objects you are instructed to seek.

Done at Lahaina, Sandwich Islands, this eight day of April, in the year of our Lord, one thousand eighth hundred and forty-two.

(Signed)

KAMEHAMEHA III. [L. S.]

(Signed) KEKAULUOHI.

No. 2.

EXTRACT FROM MR. RICHARDS' LETTER TO MR. JUDD,  
DATED LONDON, 1st MARCH 1843.

"Mr. Brinsmade will write for himself. He has done nothing to involve us, nothing except what he was designing to do in the raising of funds, and all on that subject will be right, but I have no idea that he will raise any large amount of money on that Government Bond. It is very probable that Sir George will do something. We have a meeting tomorrow on that subject."

No. 3.

EXTRACT FROM A LETTER FROM T. HAALILIO, W. RICHARDS, AND J. F. B. MARSHALL, TO HIS MAJESTY  
DATED LONDON, AUG. 18th, 1843.

"Mr. Marshall said to Mr. Addington that he had requested the favor of this interview, that he might learn, if possible, before he left England, the views of the English Government in relation to the "matters in dispute," &c. Mr. Addington said that the documents had been received, but whether they had had the effect intended, he could not say—that this much he could say, and it was *all* he could say, that the British Government had determined to send out a Consul General to the Sandwich Islands, to settle the question in dispute. Mr. Marshall urged upon him the fact that the King had despatched the Commissioners

England and France, and that it would extremely embarrass, if not defeat the objects of the embassy. Mr. Addington said that it appeared that the Government was a cypher, as far as native authority was concerned—that there were two parties, the English and American, struggling for the dominion, and there was the most bitter hostility between them. Mr. Marshall answered him that he could assure him he was in error,—that there had been three parties there, one comprising the most respectable and high-minded class of the community, who were the friends of the Government. This party was joined by the body of the American residents, for the reason that they had nothing to gain by embroiling the two Governments. The other two parties were many of the English and French, who were both endeavoring to involve the Hawaiian Government with their own respective Governments, that their own interests might be forwarded by inducing those Governments to take possession of the Islands, &c. Mr. Addington said that they had just received at the Foreign Office a statement which came to them in such an unquestionable form, that they could not but believe it, which proved the King a cypher, and was of such an outrageous character that the English Government should demand instant redress. It was that the King had given to an American a document containing his signature, but which was blank, to be filled up by the American as he pleased, with power to deed away all the lands of the Government,—that if the King was so weak as to place such enormous power in the hands of an American, the British Government should demand that special privileges should be granted to British subjects. Mr. Addington spoke very strongly on the subject. Mr. Marshall said, that though he was not sufficiently acquainted with the matter to state the precise nature of the bond which he was aware was held by an American, but which was not blank, he would unhesitatingly pronounce the statement made to the Foreign Office an entire falsehood, and would pledge himself within twenty-four hours to disprove it to His Lordship's complete satisfaction. Mr. Marshall then entered into an account of the state of things at the Islands, and gave Mr. Addington a full history of the progress of the nation, and how far that progress had been impeded by the hostility of Foreigners both English, French and Americans; of the good intentions of the Government and the embarrassments they had labored under owing to the aforesaid hostility, and the difficulty of giving to other powers a just idea of their situation. Mr. Marshall spoke very earnestly, and Mr. Addington appeared to be convinced.

“ Mr. Marshall immediately returned and applied to Mr. Brinsmade for the document Mr. Addington had referred to, and addressed a note to Mr. Addington, requesting an interview for Mr. Brinsmade, that he might explain to Mr. Addington's satisfaction the whole matter. Mr. Addington promptly answered, appointing the next day, when Mr. Marshall went down with Mr. Brinsmade, who read to Mr. Addington the document, which was a triumphant refutation of the charge and convinced Mr. Addington of the injustice of the statements made to him. Mr. Brinsmade followed by explaining how far the negotiations had progressed in Belgium, and Mr. Marshall made some further remarks upon the charges brought against the government. Mr. Addington was evi-

denly struck with the manifest malignity, which could invent a charge so completely without foundation, and the interview ended in a most satisfactory manner."

Cc.

FILED BY LADD & CO.

No. 1.

EXTRACT FROM MR. MARSHALL'S LETTER TO MR. JUBIN  
DATED CHARLESTOWN, SEPTEMBER 15th, 1843.

"I really feel for Mr. Brinsmade's disappointment in his plans, when they had so nearly been completed. I fear the house must also suffer much inconvenience from this check to their proceedings, although it is likely to prove but temporary. The projected scheme is a magnificent one, and from all I can judge, is one that will be of vast benefit to the nation, if carried on successfully, but it seems too much to undertake on so large a scale, before the experiment is more fully tried to the profitable nature of the business. In looking to the advantage it is to be to the nation, I ardently wish the enterprize the fullest success; though I must say I fear that our American mercantile interests are to be very seriously affected by its operation, at least for a short time. But I am not able to judge, perhaps, as older and more experienced heads on this subject."

No. 2

EXTRACT FROM MR. RICHARDS' LETTER TO MR. JUBIN  
DATED SEPTEMBER 18th, 1843.

"You have doubtless seen Mr. Jarves's articles in the *Commons Magazine*—valuable articles—but I exceedingly regret the altogether incorrect statement in relation to the Belgian affair. Instead of 'colonization,' not a single laborer of any kind can be introduced, except on the special application of the King himself, who is also to certify to his 'quality.' The King is virtually the *head* of the company, as its operations at the Islands are concerned, and the capital is not less than 500,000 dollars; 200,000 of which is paid for monopolies and privileges. I think all wise and business men will approve of the Belgian plan. The particulars of it you will of course learn from Ladd & Co."



## No. 3.

**EXTRACT FROM MR. RICHARDS' LETTER TO MR.  
DATED LONDON, OCTOBER 1st, 1843.**

"We have also had the untiring aid of Mr. Brinsmade, not only making out our original communications to the Foreign Office, but has also spent days and nights in copying for us. Should there be failure in the accomplishment of our plans in Belgium, so that should\* receive recompense from that source, he will, in such a case be entitled to a handsome reward from Government for the aid he rendered."

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\* It is presumed that *not* is wanting here, to complete the sense.

## No. 4.

**EXTRACT FROM MR. RICHARDS' LETTER TO MR. JUDD,  
DATED PARIS, JANUARY 29th, 1844.**

"You will also perceive something of M. Guizot's views in relation to the Sandwich Islands, by the quotation from his speech, which I send herewith. (See letter G.) Mr. Brinsmade is going to Brussels to close his business there according to previous plans. All obstacles are now removed. I shall probably return from London through Brussels. The point which you mention is well guarded."

## No. 5.

**EXTRACT FROM MR. RICHARDS' LETTER TO MR. JUDD,  
DATED BRUSSELS, 30th MARCH, 1844, TAKEN  
FROM THE FIRST PAGE OF  
THE LETTER.**

"I arrived here on the 8th and immediately commenced negotiations with the Government of Belgium, in anticipation of the commercial relations about to be established. As this despatch goes a round about way, I shall not send any copy of our communication to the Government, but merely the Government reply. The intercourse has been particularly pleasant."

**SECOND EXTRACT, TAKEN FROM THE THIRD PAGE OF  
THE SAME LETTER.**

"We are now engaged in completing the contract with the Belgians"



...

*Company*, and hope to finish so as to leave next week on Thursday. We shall pass through Paris, where we shall spend about five days, and leave one more letter with M. Guizot. We shall then proceed to London, and shall endeavor to gain, by *private interviews*, a little more acquaintance with the sentiments entertained at the Foreign Office, and expect to embark from Liverpool for Boston on the 19th of April, unless some special Providence prevents."

THIRD EXTRACT FROM THE FOURTH PAGE OF THE  
SAME LETTER.

"In relation to the operations of Mr. Brinsmade, I can say that this week we have definite promises from heavy capitalists, and, if there is any reliance to be placed in the most business like men in Belgium, all will be satisfactorily arranged within a week. But we have fully learned to consider words as nothing till they are written on paper, particularly those which relate to time. In this last respect they are as bad in France and Belgium as they are in Hawaii."

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Dd.

FILED BY J. RICORD.

No. 4.

EXTRACT FROM MR. BRINSMADE'S LETTER TO MR.  
JUDD, DATED LONDON, SEPTEMBER 14th, 1844.

"I hope myself to see you soon after you shall receive this, as I am fully determined that I will not remain much longer in Europe. No person can tell how much I have suffered during the last year and a half, from the anxieties and uncertainties attending my movements, or rather the movements of others. But hoping to have some long evenings for reviewing the scenes which have transpired during our separation.

"I still remain with unabated regard for you and yours, and all that concerns you,

Faithfully,

Your friend and servant,

(Signed)

P. A. BRINSMADE.

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No. 5.

EXTRACT FROM SIR GEORGE SIMPSON'S LETTER TO  
MR. RICHARDS, DATED LONDON,  
29th NOVEMBER, 1844.

"I found Mr. Brinsmade in London on my arrival at the St. Paul's



Coffee House, and still clinging to Belgian hopes and promises. for the past twelve months been quite evident that nothing would arise out of these negotiations, and I believe he has broken all further communication. Mr. Brinsmade pressed me very much to assist him in getting up a sort of Joint Stock Company in this country with a view to the sale of his privileges from the Hawaiian Government, and to the establishment of an import and export trade with the Islands; but considering the thing to be too visionary to be entered for a moment, I declined taking any active part in the matter, and told him he might make reference to me for information respecting the capabilities of the country, and the disposition of the Government, and its inhabitants. He urged me strongly to make him a loan of £300, upon his own personal security, and that of his house at the Islands; but I declined making any advance beyond the £100 authorized by you, which the Company paid him at my request, and charged the amount against the Government. My last interview with Mr. Brinsmade was about ten days ago, when the money was paid him, and I presume I shall see no more of him, as he appeared rather dissatisfied at my declining to make the loan he requested. I think it is very likely he will proceed at once to the States, but I am doubtful that he will be able to discharge his hotel and other bills in this country."

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I hereby certify that the foregoing are true and faithful extracts, copied from the documents referred to, which exist in this office.

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 : L. S. :  
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In testimony whereof, I have hereunto set my hand and the Great Seal of the Kingdom, in the Foreign Office, Honolulu, this nineteenth day of December, 1846.

R. C. WYLLIE,  
 Minister of Foreign Relations.

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